

SESSION LAWS
OF
HAWAII
PASSED BY THE
TWENTIETH AND TWENTY-FIRST STATE
LEGISLATURES
STATE OF HAWAII

SECOND SPECIAL SESSION 2000

Convened on Monday, August 7, 2000 and
Adjourned sine die on Tuesday, August 22, 2000

REGULAR SESSION 2001

Convened on Wednesday, January 17, 2001 and
Adjourned sine die on Thursday, May 3, 2001

SPECIAL SESSION 2001

Convened on Monday, June 4, 2001 and
Adjourned sine die on Friday, June 8, 2001

SECOND SPECIAL SESSION 2001

Convened on Tuesday, July 10, 2001 and
Adjourned sine die on Tuesday, July 10, 2001

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PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Second Special Session of 2000 and Regular and Special Sessions of 2001. This volume does not include matter from the First Special Session of 2000 because that session dealt only with the consent of judicial nominees by the Senate.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Wendell K. Kimura
Revisor of Statutes

Honolulu, Hawaii
July 10, 2001

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2001**

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**Session Laws of Hawaii
Passed By The
Twentieth State Legislature
Second Special Session
2000**

ACT 1

H.B. NO. 2

A Bill for an Act Relating to the Privacy of Health Care Information Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 87, Session Laws of Hawaii 1999, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, [2000; provided that sections 5, 6, and 7 shall take effect upon its approval.] 2001.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall take effect retroactive to July 1, 2000.

(Approved August 29, 2000.)

PROPOSED CONSTITUTIONAL AMENDMENT

Note

This proposed constitutional amendment was ratified by the electorate on November 7, 2000.

H.B. NO. 1

A Bill for an Act Proposing an Amendment to Article IV, Sections 7 and 8, of the Constitution of the State of Hawaii, to Stagger Senate Terms After Reapportionment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Article IV, sections 7 and 8, of the Constitution of the State of Hawaii, are amended to read as follows:

PROPOSED CONSTITUTIONAL AMENDMENT

“ELECTION OF SENATORS AFTER REAPPORTIONMENT

Section 7. Regardless of whether or not a senator is serving a term [which that would have extended past the general election at which an apportionment plan becomes effective, the term of office of all senators shall end at that general election. The staggered terms of senators in each district shall be recomputed as established by the next section in this article, and the number of senators in a senatorial district under the reapportionment plan of the commission.

STAGGERED TERMS FOR THE SENATE

Section 8. [Any re-elected senator whose prior term was shortened to two years by the occurrence of the reapportionment year shall, after reapportionment, be assigned to serve a four-year term. Any new senator and re-elected senator whose prior term was not shortened by the occurrence of the reapportionment year shall, after reapportionment, be assigned to serve a two-year term.

If the number of senators assigned to serve a two-year term under the previous paragraph exceeds twelve, the number of such senators shall be reduced to twelve by random selection as provided by law.] The reapportionment commission shall, as part of the reapportionment plan, assign two-year terms for twelve senate seats for the election immediately following the adoption of the reapportionment plan. The remaining seats shall be assigned four-year terms. Insofar as practicable, the commission shall assign the two-year terms to senate seats so that the resident population of each senate district shall have no more than two regular senate elections for a particular senate seat within the six-year period beginning in the even-numbered year prior to the reapportionment year; provided that in the event of a multi-member senate district, the senators elected with the highest number of votes in that district in the election immediately following the adoption of the reapportionment plan shall fill the senate seats in that district which were assigned the four-year terms by the commission.”

SECTION 2. The question to be printed on the ballot shall be as follows:

“Shall the reapportionment commission be assigned the duty to maintain the staggering of senate terms in a manner that is equitable for all candidates in an election?”

SECTION 3. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 4. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

**Session Laws of Hawaii
Passed By The
Twenty-First State Legislature
Regular Session
2001**

ACT 1

S.B. NO. 890

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,256,084 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 2002, including the 2001 regular session, Twenty-first Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2001 and 2002 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,545,077 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 2002, including the 2001 regular session, Twenty-first Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2001 and 2002 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2001 and 2002 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 2001 and 2002 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 16, 2002, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 16, 2002.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until

ACT 1

otherwise prescribed by law, the expenses of such member shall be \$130 a day as authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,002,219 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

- (1) The sum of \$2,172,443 for defraying the expenses of the office of the legislative auditor during fiscal year 2001-2002;
- (2) The sum of \$679,776 for defraying the expenses of the office of the state ethics commission during fiscal year 2001-2002; and
- (3) The sum of \$150,000 during fiscal year 2001-2002 for:
 - (A) Performing special studies;
 - (B) Improving capabilities for planning, programming, and budgeting;
 - (C) Fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives;
 - (D) Legislative studies and contractual services for those studies; and
 - (E) Such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary to the office of the legislative auditor for the purpose of meeting costs and expenses related to Felix v. Cayetano consent decree studies and other activities requested by the Legislature. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 2002.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,378,523 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2001-2002 including equipment relating to computer systems programming and operations.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$755,844 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2001-2002.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$600,000 to the Senate; and
- (2) \$600,000 to the House of Representatives.

This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 2002.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000, or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television

broadcasts of legislative proceedings. This appropriation shall take effect upon the approval of this Act and shall be expended by the legislature for the purposes of this section. This appropriation shall not lapse until June 30, 2002.

SECTION 12. As of the close of business on June 30, 2002, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 13. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 14. This Act shall take effect upon its approval.

(Approved February 2, 2001.)

ACT 2

H.B. NO. 700

A Bill for an Act Relating to the Sale of Poisons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 330-1, Hawaii Revised Statutes, is amended to read as follows:

“§330-1 Definition of poison. The term “poison”[,]¹ as used in this chapter, ~~[in chapter 461, and in the laws relating to the department of health,]~~ includes any chemical~~[- drug,]~~ or preparation ~~[which]~~ that has properties ~~[which]~~ that are commonly considered poisonous or ~~[which]~~ is capable of affecting the human organism in such a way and to such an extent that its possession, sale, transfer, use, or storage ~~[shall be]~~ is found by the department ~~[in its rules]~~ to require regulation for ~~[the]~~ public health and safety. ~~[Poison]~~ The term “poison” does not include any drug for which a prescription is required by state or federal law.”

SECTION 2. Section 330-2, Hawaii Revised Statutes, is amended to read as follows:

“§330-2 Rules ~~[and regulations]~~ concerning poisons. The department of health ~~[shall make]~~ may adopt rules ~~[and regulations, and amend the same from time to time in its discretion,]~~ concerning poisons and poison containers.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved March 29, 2001.)

Note

1. So in original.

A Bill for an Act Relating to Section 13 of Act 380, Session Laws of Hawaii 1997.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 380, Session Laws of Hawaii 1997, is amended by amending section 13 to read as follows:

“SECTION 13. This Act shall take effect upon its approval; provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to sections [195D-B or] 195D-4, 195D-21, or 195D-22,¹ Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, [2002.] 2007.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved March 29, 2001.)

Note

1. Comma should be underscored.

A Bill for an Act Relating to Mortgage Broker Licensing.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 454-3, Hawaii Revised Statutes, is amended by amending subsections (c) through (i) to read as follows:

“(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business, a bond in the amount of [~~\$50,000;~~] \$15,000 executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety[; ~~provided that a mortgage broker who does not engage in mortgage servicing or collecting may apply to the commissioner for a lower bond requirement of \$15,000 on the application form prescribed by the commissioner.~~]¹ The bond shall be conditioned upon the faithful compliance of the broker with [the provisions of] this chapter. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the broker or the solicitors; provided that the aggregate liability of the surety shall[~~, in no event,~~] not exceed the sum of the bond. The surety may cancel the bond by giving sixty days’ notice in writing to the commissioner and shall thereafter be relieved of any liability for any breach of condition occurring after the effective date of cancellation. A mortgage broker’s license shall not be in effect at any time when the bond is not in full force and effect. [~~Only one bond shall be required of any person.~~]

(d) Each application for a license or its renewal shall be made in writing, on the forms and in the manner and accompanied by evidence in support of the applications as prescribed by the commissioner. The commissioner shall require information with regard to the applicant as the commissioner may deem desirable, with due regard to the paramount interests of the public, as to the experience, financial integrity, and competency of the applicant as to financial transactions involving primary or subordinate mortgage financing. In the event the commissioner orders denial of issuance or of renewal of a license, the order shall be made only pursuant to chapter 91.

(c) ~~[The license fee for a license calendar year or any part thereof shall be \$100 for a mortgage broker and \$25 for a mortgage solicitor, which fees]~~ All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited [by the commissioner to the credit of] into the compliance resolution fund established pursuant to section 26-9(o). Failure of any mortgage broker or mortgage solicitor to pay the [license] biennial renewal fee [for a license calendar year] on or before December 31 of [the preceding calendar] an even-numbered year shall constitute an automatic forfeiture of the [broker's or solicitor's] license. [A broker's or solicitor's] The forfeited license [which is forfeited for nonpayment of the license fee] may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee [in the amount of \$100 for mortgage brokers and \$25 for mortgage solicitors] is paid in addition to the delinquent license fee. A licensee who fails to restore a license as provided in this subsection shall apply as a new applicant.

(f) If the [licensee] mortgage broker is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association, or other organization, to engage in the business of mortgage broker~~[-, and the].~~ The officer or member shall be designated in the application for license~~[-. Each officer or member, other than the officer or member so designated through whom it engages in the business of mortgage broker, shall be required to be licensed as a mortgage solicitor as provided in this chapter.]~~ and have two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner.

(g) ~~[A license shall be prominently displayed in the office of the mortgage broker. A mortgage solicitor's license shall remain in the possession of the licensed mortgage broker employer until canceled or until the mortgage solicitor leaves the employ of the mortgage broker. A license shall not be transferable or assignable; provided that upon payment of a reissuance fee of \$3, a new license may be issued to a mortgage solicitor, valid for the remainder of the calendar year in which it is issued, when the mortgage solicitor is employed by a different mortgage broker.]~~ Upon request, the mortgage broker shall make available for inspection the mortgage broker's license and the licenses of any mortgage solicitors employed by the mortgage broker.

(h) Immediately upon the mortgage solicitor's withdrawal from the employ of the mortgage broker, the mortgage broker shall return the mortgage solicitor's license to the ~~[commissioner for cancellation.]~~ mortgage solicitor.

(i) Every licensed mortgage broker shall have and maintain a principal place of business in the State for the transaction of business. ~~[The license shall specify the address of the principal place of business.]~~ In the event the mortgage broker maintains a branch office or offices, the commissioner ~~[shall]~~, upon application and payment of a fee ~~[of \$2],~~ shall issue a branch office license ~~[specifying thereon the address of the branch office].~~ The mortgage broker shall designate a mortgage solicitor who has two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner, to be in charge of each branch office. [In case the address of the principal place of business or of any branch office is changed, the licensee shall notify the commissioner of the change of address, and the commissioner shall endorse the change of address on the license without charge.]

SECTION 2. Section 454-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend a license ~~[for a period not exceeding two years]~~ for any of the following acts or conduct of a licensee:

ACT 5

- (1) Making a false promise tending to influence, persuade, or induce, or pursuing a course of misrepresentation or false promises through agents, solicitors, advertising, or otherwise;
- (2) Misrepresentation or concealment of any material fact with respect to any transaction resulting in injury to any party;
- (3) Failure to disburse funds in accordance with an agreement;
- (4) Failure to account or deliver to any person any personal property such as money, fund, deposit, check, draft, mortgage, or other document or thing of value which has come into the person's hands and which is not the person's property or which the person is not in law or equity entitled to retain, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery;
- (5) Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check, or draft, entrusted to the licensee by any person dealing with the licensee as a broker, in escrow pursuant to a written agreement, or to deposit the funds in a trust or escrow bank account maintained by the licensee with a bank located and doing business in the State, wherein the funds shall be kept until disbursement thereof is authorized; or
- (6) Failure to comply with this chapter or any order or rule made under the² authority of this chapter."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 2001.)

Notes

1. Period should not be bracketed and stricken.
2. "The" should not be underscored.

ACT 5

H.B. NO. 1001

A Bill for an Act Relating to Garnishment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 652-13, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved April 6, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5

ACT 6

H.B. NO. 1176

A Bill for an Act Relating to Inspections by the County Fire Chief or the Chief's Designees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 132-5, Hawaii Revised Statutes, is amended to read as follows:

“§132-5 Right of entry for inspection; unlawful to obstruct. The county fire chief or the chief's designees may at all reasonable hours enter any buildings, structures, or premises within the fire chief's jurisdiction, except the interior of private dwellings, to make any inspection, investigation, or examination which is authorized to be made under this chapter. The county fire chief or the chief's designees may enter any private dwelling whenever the fire chief ~~[has]~~ or the chief's designees have reason to believe that dangerous conditions creating a fire hazard exist in the dwelling. The county fire chief ~~[or any member of any fire department]~~ or the chief's designees may enter any private dwelling when a fire has occurred in the dwelling. It shall be unlawful to obstruct, hinder, or delay any person having the right to make the inspection, investigation, or examination in the performance of duty.

The county fire chief or the chief's designees shall make an ~~[annual]~~ inspection of all ~~[state]~~ state-owned or ~~[county]~~ county-owned buildings and facilities, the frequency of which shall be made in accordance with section 132-6, and shall make a report to the authorities responsible for the maintenance of any state-owned or county-owned building or facility when it is found that a building or facility does not meet minimum standards of fire and safety protection.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 6, 2001.)

ACT 7

H.B. NO. 1547

A Bill for an Act Relating to Towing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to address the increased costs of towing which is reflected in the increase in gasoline prices, employee overhead, and general inflation.

SECTION 2. Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

- (1) Charge not more than ~~[\$50]~~ \$55 for a tow, or ~~[\$60]~~ \$65 for a tow using a dolly, plus a mileage charge of ~~[\$5]~~ \$6.50 per mile towed and \$15 per day or fraction thereof for storage for the first seven days and \$10 per

day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from Friday six o'clock p.m. to Monday six o'clock a.m., the towing company shall be entitled to an overtime charge of \$15. If the vehicle is in the process of being hooked up to the tow truck and the owner appears on the scene before the vehicle has been moved by the tow truck, the towing company shall unhook the vehicle upon payment by the owner of an "unhooking" fee of not more than \$50. If the owner is unwilling or unable to pay the "unhooking" fee, the vehicle may be towed. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of [~~\$25~~] \$30 shall be applicable;

- (2) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:
 - (A) The maximum towing charges and fees allowed by law;
 - (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
 - (C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit;

- (3) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, the owner with a receipt stating:
 - (A) The maximum towing charges and fees allowed by law; and
 - (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
- (4) Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine located on the premises."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved April 6, 2001.)

ACT 8

S.B. NO. 1135

A Bill for an Act Relating to Hazardous Waste.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 342J-34.6, Hawaii Revised Statutes, is amended to read as follows:

“[[§342J-34.6]] Brokers; notification; and identification numbers. (a) Not later than forty-five days after July 1, 1994, any person who acts as a hazardous waste broker, with respect to any substance listed as hazardous waste or identified by its characteristics as hazardous waste under 40 Code of Federal Regulations Part 261, shall apply to the department for an identification number and shall file with the department a notification stating the location and general description of the hazardous waste handling activity of the broker. [The initial notification from the broker shall include a notarized written statement from the owner, or owner's agent, of the facility or land to be used by the broker for hazardous waste handling activity acknowledging the hazardous waste handling activity of the broker.]

(b) Not later than forty-five days after the adoption of any rule pursuant to this chapter that lists or identifies by characteristics any substance as hazardous waste, any person who acts as a hazardous waste broker with respect to such substance shall apply to the department for an identification number and shall file with the department a notification stating the location and general description of the hazardous waste handling activity of the broker. [The initial notification from the broker shall include a notarized written statement from the owner, or owner's agent, of the facility or land to be used by the broker for hazardous waste handling activity acknowledging the hazardous waste handling activity of the broker.] This subsection shall not apply to activities or hazardous waste as to which notification has been made in compliance with subsection (a).

(c) Each hazardous waste broker shall be issued only one identification number.

(d) Any person required by this section to provide notification to the department shall advise the department[, by January 31 of each year following initial notification,] of the following information, including any which may have changed during the prior year:

- (1) Location of each business;
- (2) Name of business;
- (3) Mailing address[;] of each business;
- (4) Name of person who operates the facility at which hazardous waste is handled;
- (5) Name of owner of the facility at which hazardous waste is handled;
- (6) Name of owner of land at which hazardous waste is handled; and
- (7) [A notarized written statement from] A copy of a notice sent by the broker to the facility owner, or owner's agent, of the facility or land [to be] used by the broker [for hazardous waste handling activity acknowledging the hazardous waste handling activity of the broker.] as the broker's principal place of business. The notice shall be mailed by certified mail to the owner, or owner's agent, and shall describe the broker's hazardous waste handling activities.

(e) This section shall not apply to owners or operators of hazardous waste treatment, storage, or disposal facilities.”

ACT 9

SECTION 3.¹ Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4.¹ This Act shall take effect upon its approval.

(Approved April 6, 2001.)

Note

1. So in original.

ACT 9

H.B. NO. 415

A Bill for an Act Relating to Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any limitations on commercial permits for Lahaina and Maalaea small boat ~~[harbor;]~~ harbors, vessels engaging in inter-island ferry service between the islands of Maui and Molokai shall be afforded preferential consideration for both ferry landings and other commercial purposes, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Lahaina and Maalaea small boat ~~[harbor;]~~ harbors; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route between the islands of Maui and Molokai;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the Lahaina harbor entrance channel and safe docking along the north face of the Lahaina pier;
- (3) The vessel operations will not result in unreasonable interference with the use of Lahaina or Maalaea small boat ~~[harbor]~~ harbors by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator’s termination of inter-island ferry service route between the islands of Maui and Molokai.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 19, 2001.)

ACT 10

H.B. NO. 688

A Bill for an Act Relating to the Effective Date of Existing Uses Under the Water Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 174C-50, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) All existing uses of water in a designated water management area, except those exempted from regulation by this chapter, may be continued after [July 1, 1987,] the effective date of designation only with a permit issued in accordance with sections 174C-51, 174C-52, and 174C-53(b).

(b) After publication as provided in section 174C-52, the commission shall issue a permit for the continuation of a use in existence on [July 1, 1987,] the effective date of designation, if the criteria in subsection (a) are met and the existing use is reasonable and beneficial.

Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that the commission may make such a determination without a hearing, if the quantity of water applied for does not exceed an amount per month established by rule or if the quantity of water applied for exceeds an amount per month established by rule, but no objection to the application is filed by any person having standing to file an objection. In determining whether an application does not exceed the amount per month established by rule, the commission shall consider an average of water use over the three-month period immediately preceding the filing of the application.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall take effect retroactive to July 1, 1987.

(Approved April 19, 2001.)

ACT 11

H.B. NO. 1257

A Bill for an Act Relating to Lei Day.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. On Tuesday, May 1, 1928, the territory of Hawai‘i celebrated its first “May Day Is Lei Day” celebration. Schools held elaborate programs throughout the territory. There were also many festivities and competitions that exhibited lei made of flowers from the different islands.

In 1929, Governor Wallace R. Farrington signed a Lei Day proclamation. The proclamation urged the citizens of the territory to “observe the day and honor the traditions of Hawai‘i-*nei* by wearing and displaying lei.” Then in 1953, Mayor John H. Wilson, city and county of Honolulu, chairman, lei day committee, proclaimed the first day of May 1953 to be celebrated as “Lei Day”, with “all the festivities of the Polynesian tradition.” Due to its long history, the legislature finds that it is fitting to honor this festive, nostalgic, and meaningful day.

ACT 12

The purpose of this Act is to officially recognize May 1 as “Lei Day In Hawai‘i”.

SECTION 2. Chapter 8, Hawai‘i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§8- **Lei Day.** May 1 of each year shall be known as “May Day Is Lei Day In Hawai‘i”; provided that this day is not and shall not be construed to be a state holiday.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 12

H.B. NO. 1473

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-52, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within thirty calendar days thereafter, the transferee shall forward the certificate of ownership so endorsed to the director of finance who shall file the same[-]; provided that if the recorded lien holder does not have an office in the State, the applicable period shall be sixty days. Whenever a transferee fails to comply with these provisions, the director of finance shall charge a fee of \$50, in addition to the fee provided in section 286-51, for a new certificate of ownership.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 19, 2001.)

ACT 13

S.B. NO. 210

A Bill for an Act Relating to Pilots.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii’s economy is dependent on the safe and uninterrupted flow of commerce in and out of its harbors. Port pilots provide a critical service facilitating the continuous flow of vessels, from fishing boats to large cruise ships, throughout the harbors. In order to ensure safety, protection of Hawaii’s fragile environment, and the continued flow of commerce, port pilots require highly

technical and skilled training. The legislature finds that it is important that there are trained port pilots to fill vacancies as the need arises.

SECTION 2. Chapter 462A, Hawaii Revised Statutes, is amending by adding a new section to be appropriately designated and to read as follows:

“§462A- Adequate supply of licenses. (a) The director shall determine the number of pilots necessary to maintain an efficient pilotage service in accordance with this chapter.

(b) The director, in consultation with users of pilotage services, the department of transportation’s harbors division, and the professional association of port pilots in the State shall give primary consideration to the public interest in ensuring that there is an adequate supply of qualified pilots to safely and economically meet the requirements of commerce.”

SECTION 3. Section 462A-3, Hawaii Revised Statutes, is amended to read as follows:

“§462A-3 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director shall:

- (1) Grant licenses to port pilots and deputy port pilots pursuant to this chapter[;], when the need arises;
- (2) Adopt, amend, or repeal rules in accordance with chapter 91 as may be necessary to carry out the purposes of this chapter which are to provide for maximum efficiency in navigating vessels entering or leaving the waters of this State; maintain a pilotage system devoted to the preservation, and protection of lives, property, and vessels entering or leaving waters of the State; and ensure an adequate supply of qualified pilots in aid of commerce and navigation;
- (3) Develop appropriate standards for licensure [including] to maintain an adequate supply of pilots based on the needs of users of pilotage services or the department of transportation’s harbors division. Licensing requirements shall include examinations and investigations to determine whether persons applying for full port pilot, or deputy port pilot licenses are qualified;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend, revoke or deny the issuance of any license for any cause prescribed by this chapter, or for any violation of the rules;
- (6) Investigate any person for violations of any provisions of this chapter;
- (7) Adopt methods to improve disciplinary and enforcement programs against violations of this chapter; and
- (8) Do all things reasonable, necessary, and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved April 19, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Each person sustaining accidental harm, or such person’s legal representative, may, except as provided in subsection (b), obtain the motor vehicle insurance benefits through the plan whenever:

- (1) No liability or uninsured motorist insurance benefits under motor vehicle insurance policies are applicable to the accidental harm;
- (2) No such insurance benefits applicable to the accidental harm can be identified; or
- (3) The only identifiable insurance benefits under motor vehicle insurance policies applicable to the accidental harm will not be paid in full because of financial inability of one or more self-insurers or insurers to fulfill their obligations.

(b) A person, or such person’s legal representative, shall be disqualified from receiving benefits through the plan if:

- (1) Such person is disqualified for criminal conduct under section 431:10C-305(d) from receiving the motor vehicle insurance benefits; or
- (2) Such person was:
 - (A) The owner or registrant of the motor vehicle at the time of the motor vehicle’s involvement in the accident out of which such person’s accidental harm arose;
 - (B) The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle[;]
 - (C) ~~The owner, operator, or passenger of a motorcycle or motor scooter as defined in section 286-2; or~~
 - (D) ~~A pedestrian incurring accidental harm arising out of a motorcycle accident or a motor scooter accident, as defined in section 431:10G-101].~~

(c) Any person eligible for benefits under this part, and who becomes eligible to file a claim or an action against the mandatory bodily injury liability or property damage liability policies, shall, upon the bureau’s determination of eligibility, be entitled to:

- (1) The full personal injury protection benefits as if the victim had been covered as an insured at the time of the accident producing the accidental harm[; and], but not including an owner, operator, or passenger of a motorcycle or motor scooter, as defined in section 286-2, or a pedestrian incurring accidental harm arising out of a motorcycle or motor scooter accident, as defined in section 431:10G-101; and
- (2) The rights of claim and action against the insurer, assigned under section 431:10C-403, with reference to the mandatory bodily injury liability policy for accidental harm, and with reference to the mandatory property damage liability policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory bodily injury liability or property damage liability policies, or the basic personal injury protection policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of this subpart and subpart A, except that the date of

notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 431:10C-315.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 19, 2001.)

ACT 15

S.B. NO. 1077

A Bill for an Act Relating to Trademarks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 482, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART II. TRADEMARKS AND SERVICE MARKS

§482-A Registrability. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

- (1) Consists of, or comprises immoral, deceptive, or scandalous matter;
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
- (4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual’s written consent;
- (5) Consists of a mark which:
 - (A) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;
 - (B) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or
 - (C) Is primarily a surname;

provided that nothing in this paragraph shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods or services. The director may accept as evidence that the mark has become distinctive as used on or in connection with the applicant’s goods or services, proof of continuous use thereof as a mark by the applicant in this State for the five years before the date on which the claim of distinctiveness is made; or
- (6) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

§482-B Application for registration. (a) Subject to the limitations set forth in this part, any person who uses a mark may file in the office of the director, in a manner complying with the requirements of the director, an application for registration of that mark setting forth at least the following information:

- (1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the director, or if a limited liability company, the names of the members or managers, as specified by the director;
- (2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with such goods or services, and the class in which such goods or services fall;
- (3) The date when the mark was first used anywhere, and the date when it was first used in this State by the applicant or a predecessor in interest; and
- (4) A statement that the applicant is the owner of the mark, the mark is in use, and to the knowledge of the person verifying the application, no other person has registered, either federally or in this State, or has the right to use, the mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

(b) The director may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and, if so, the applicant shall fully disclose the filing date and serial number of each application, the status of the application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The director may also require that a drawing of the mark accompany the application and comply with requirements the director may specify in rules.

(d) The application shall be signed and verified by the applicant, a member of the firm, or an officer of the corporation or association applying. The application shall be accompanied by two specimens showing the mark as actually used and the application fee payable to the director.

§482-C Filing of applications; appeal. (a) Upon the filing of an application for registration and payment of the application fee, the director shall cause the application to be examined for conformity with this part.

(b) The applicant shall provide any additional pertinent information requested by the director including a description of a design mark and may make, or authorize the director to make, such amendments to the application as may be reasonably requested by the director or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights in the disclaimed matter, or the applicant's or registrant's rights of registration in another application if the disclaimed matter is or will become distinctive of the applicant's or registrant's goods or services.

(d) If the application for registration of a mark is denied, the director shall notify the applicant of the denial and the reasons for the denial. An applicant may

appeal the director's denial of an application for registration of a mark in accordance with section 91-13.1.

(e) Applications concurrently being processed by the director and seeking registration of the same or confusingly similar marks for the same or related goods or services shall be reviewed in the order that they are filed. If an earlier-filed application is granted registration, the other applications seeking registration of the same or confusingly similar marks for the same or related goods or services shall be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with section 482-H.

§482-D Certificate of registration. (a) Upon compliance by the applicant with the requirements of this part, the director shall issue a certificate of registration to the applicant. The certificate of registration shall be issued with the signature of the director and the seal of the State, and shall show:

- (1) The name and business address of the person claiming ownership of the mark;
- (2) If a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, or if a limited liability company, the names of the members or managers, as specified by the director;
- (3) The date the mark was first used anywhere;
- (4) The date the mark was first used in this State;
- (5) The class of goods or services and a description of the goods or services, on or in which the mark is used;
- (6) A reproduction of the mark; and
- (7) The registration date and the term of the registration.

(b) The original or a copy certified by the director of a certificate of registration issued under this part shall be admissible in evidence as sufficient proof of the registration of a mark in any action or judicial proceeding in any court of this State.

§482-E Duration and renewal. (a) The registration of a mark shall be effective for a term of five years from the date of registration. A renewal fee, payable to the director, shall accompany the application for renewal of the registration.

(b) A registration may be renewed for successive periods of five years by filing a renewal application within six months prior to the expiration of the current term, complying with the renewal requirements prescribed by the director, and paying the appropriate renewal fee.

(c) Any registration in effect on the date on which this part becomes effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the director in accordance with this section.

(d) All applications for renewal under this part shall include a verified statement that the mark has been and is still in use, and include a specimen showing actual use of the mark on or in connection with the goods or services.

§482-F Assignment; change of name. (a) The registration of a mark shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment shall be executed in writing and may be recorded by filing an application with the director and paying an appropriate recording fee. Upon recording of the assignment, the director shall issue a new certificate for the remainder of the term of the registration or of the last renewal thereof in the name of the new

assignee. An assignment of a registration of a mark under this section shall be void against a subsequent purchaser for valuable consideration without notice, unless the assignment is recorded with the director within three months after the date thereof or prior to the subsequent purchase.

(b) Any registrant may change the name of the person to whom the mark is issued by filing an application to change the name of the registrant with the director and paying the appropriate fee. The director shall issue a new certificate of registration in the name of the registrant.

§482-G Records. The director shall maintain a record of all marks registered or renewed under this part, including a record of all marks recorded pursuant to section 482-F.

§482-H Cancellation. (a) The director shall cancel the registration of a mark if the director receives a request for cancellation from the registrant or assignee of record, a registration is not timely renewed in accordance with the provisions of this part, or a court of competent jurisdiction finds that:

- (1) The registered mark has been abandoned;
- (2) The registrant is not the owner of the mark;
- (3) The registration was granted improperly;
- (4) The registration was obtained fraudulently;
- (5) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or
- (6) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of filing the application for registration under this part; provided that if a registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office which covers an area including this State, the registration shall not be canceled for such an area.

(b) The director shall cancel a registration when a court of competent jurisdiction orders cancellation of a registration.

§482-I Classification. The director may by rule establish a classification of goods and services for convenience of administration of this part, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the director may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

§482-J Fraudulent registration. Any person who knowingly makes a false or fraudulent representation or declaration in registration documents filed with the director shall be liable for all damages sustained as a result of the registration documents as determined by a court of competent jurisdiction.

§482-K Infringement. Subject to section 482-O, any person who:

- (1) Uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in which such use is likely to cause

confusion or mistake, or to deceive, as to the source of origin of such goods or services; or

- (2) Reproduces, counterfeits, copies, or colorably imitates a mark registered under this part and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used on or in connection with the sale or other distribution in this State of such goods or services;

shall be liable in a civil action by the registrant for any and all of the damages and remedies provided in section 482-M; provided that under paragraph (2) the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion, mistake, or to deceive.

§482-L Injury to business reputation; dilution. (a) The owner of a mark which is famous in this State shall be entitled, subject to the principles of equity and upon such terms as a court deems reasonable, to an injunction against another person's commercial use of a mark or trade name, if the use begins after the mark has become famous and causes dilution of the distinctive quality of the famous mark, and to obtain such other relief as provided in this part. In determining whether a mark is distinctive and famous, a court may consider but shall not be limited to factors such as:

- (1) The degree of inherent or acquired distinctiveness of the mark in this State;
- (2) The duration and extent of use of the mark in connection with the goods and services with which the mark is used;
- (3) The duration and extent of advertising and publicity of the mark in this State;
- (4) The geographical extent of the trading area in which the mark is used;
- (5) The channels of trade for the goods or services with which the mark is used;
- (6) The degree of recognition of the mark in the trading areas and channels of trade in this State used by the owner of the mark and the person against whom the injunction is sought;
- (7) The nature and extent of the use of the same or a similar mark by third parties; and
- (8) Whether the mark is registered in this State, or federally under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the principal register.

(b) In any action brought under this section, the owner of a famous mark shall be entitled only to injunctive relief in this State, unless the person against whom the injunctive relief is sought wilfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If wilful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(c) The fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark, the noncommercial use of the mark, and all forms of news reporting and news commentary shall not be actionable under this section.

§482-M Remedies. (a) The owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark, and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as the court deems just and reasonable, and may require the defendants to pay the owner all profits derived from and all damages suffered by reason of such wrongful manufacture, use, display, or

sale; and the court may also order that any counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the owner, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times the lost profits and damages incurred by the owner, and award reasonable attorneys' fees to the owner when the court finds that the defendants committed the wrongful acts knowingly or in bad faith.

(b) The enumeration of any right or remedy under this part shall not adversely affect a registrant's right to pursue criminal penalties under other laws of this State.

§482-N Forum for actions regarding registration; service on out of state registrants. (a) An action to require cancellation of a mark registered under this part shall be brought in circuit court. In an action for cancellation, the director shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(b) In any action brought against a registrant that is a nonresident of this State, service may be effected pursuant to sections 634-35 and 634-36.

§482-O Common law rights. Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

§482-P Fees. The application fee to register a mark shall be \$50. A special handling fee of \$20 for expediting the registration of a mark shall be assessed by the director. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o). Unless otherwise specified by the director, these fees shall not be refundable.

§482-Q Severability. If any provision of this part is deemed to be invalid, the remaining provisions of this chapter shall continue to be effective."

SECTION 2. Chapter 482, Hawaii Revised Statutes, is amended by designating sections 482-1 to 482-12 as PART I, entitled "TRADE NAMES, PRINTS, AND LABELS".

SECTION 3. Section 482-1, Hawaii Revised Statutes, is amended to read as follows:

"§482-1 Definitions. As used in this chapter, unless the context otherwise requires:

~~["Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.~~

~~"Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.~~

~~"Trademark" means a mark used by a person to identify goods and distinguish them from the goods of others.~~

~~"Trade name" means a word or name used by a person to identify the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.]~~

"Abandonment" of a mark means when either of the following occurs:

- (1) When its use has been discontinued with intent not to resume such use; provided that intent not to resume may be inferred from circumstances, and nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or
- (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

“Applicant” includes the person filing an application for registration of a mark under this chapter, and the legal representatives, successors, or assigns of such person.

“Dilution” means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of competition between the owner of the famous mark and other parties, or likelihood of confusion, mistake, or deception.

“Director” means the director of the department of commerce and consumer affairs.

“Mark” includes any trademark or service mark, entitled to registration under this chapter whether registered or not.

“Partnership” includes a general partnership, limited partnership, and limited liability partnership.

“Person” and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter, includes an individual, firm, partnership, corporation, limited liability company, union, association, or other organization capable of suing and being sued in a court of law.

“Registrant” includes the person to whom the registration of a mark under this chapter is issued, and the legal representatives, successors, or assigns of the person.

“Service mark” means any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

“Trademark” means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of the person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

“Trade name” means any name used by a person to identify a business or vocation of such person.

“Use” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use:

- (1) With respect to goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto; or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this State; and
- (2) With respect to services when it is used or displayed in the sale or advertising of services and the services are rendered in this State.”

SECTION 4. Section 482-2, Hawaii Revised Statutes, is amended to read as follows:

“§482-2 Certificate. (a) Any person desiring to register any print~~[,]~~ or label~~[, or trademark]~~ intended to be attached or applied to goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to register a ~~[service mark, or a]~~ trade name~~[,]~~ may obtain a certificate of the registration of the print, label, ~~[trademark, service mark,]~~ or trade name in the manner hereinafter provided.

(b) Before any person may receive a certificate of registration of a print~~[,]~~ or label, ~~[or trademark,]~~ the person shall file in the office of the director ~~[of commerce and consumer affairs]~~ an application for the registration of the print~~[,]~~ or label, ~~[or trademark,]~~ with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print~~[,]~~ or label, ~~[or trademark,]~~ and describing the goods or manufactured articles for which the print~~[,]~~ or label, ~~[or trademark]~~ is used, and stating the manner in which the print~~[,]~~ or label~~[, or trademark]~~ is used. ~~[Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used.]~~ The application shall be accompanied by two exact copies of the print, label, ~~[trademark, service mark,]~~ or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name, print, or label~~[, trademark, or service mark]~~ shall be assessed by the ~~[department.]~~ director. All special handling fees shall be credited to the compliance resolution fund established under section ~~[§ 26-9(o)(H)].~~”

SECTION 5. Section 482-3, Hawaii Revised Statutes, is amended to read as follows:

“§482-3 Record, issuance and effect of certificate. (a) Upon receiving the application accompanied by the fee, the director ~~[of commerce and consumer affairs]~~ shall cause the print, label, ~~[trademark, service mark,]~~ or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, ~~[trademark, service mark,]~~ or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, ~~[trademark, service mark,]~~ or trade name which is substantially identical with any registered print, label, ~~[trademark, service mark,]~~ or trade name or with the name of any corporation ~~[or,]~~ partnership, or limited liability company registered in accordance with chapters ~~[415,]~~ 414, 415A, 415B, 425, ~~[and]~~ 425D~~[,]~~, and 428; provided further that the print, label, ~~[trademark, service mark,]~~ or trade name is continued in actual use by the applicant in the State or elsewhere in the United States, or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation ~~[or,]~~ partnership, or limited liability company name, or trade name ~~[or trademark]~~.

(b) The registration of a print, label, ~~[trademark, service mark,]~~ or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in a form as the director may provide. Upon filing the application for renewal, the applicant shall pay the director a fee of \$50.

(c) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 6. Section 482-4, Hawaii Revised Statutes, is amended to read as follows:

“§482-4 Certain prints, labels, ~~[trademarks, service mark,]~~ union labels, and trade names not to be adopted or used. (a) It shall be unlawful for any person to adopt or use a print, label, ~~[trademark, service mark,]~~ or trade name which is identical to or confusingly similar with any registered print, label, ~~[trademark, service mark,]~~ or trade name, or the name of any corporation, partnership, or limited liability company~~[-, or limited liability partnership]~~ existing or registered, or authorized to transact business, in accordance with the laws of this State, on corporations, partnerships, or limited liability companies~~[-, or limited liability partnerships-']~~, or a name the exclusive right to which is, at the time, reserved in this State.

(b) When a bona fide labor union, or association of employees has adopted a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the members of the union or association and the device has been registered pursuant to sections 482-2 and 482-3, then it shall be unlawful for any person to adopt, print, distribute, or otherwise use the device or one so similar as to be confused therewith. Any person, except the director ~~[of commerce and consumer affairs]~~, found to be in violation of this subsection may, in addition to any other penalty assessed or otherwise imposed by law, be required to pay all costs and attorney’s fees incurred in seeking enforcement of this subsection, and may be ordered by the court to pay damages to the bona fide labor union or association of employees involved in such amount as may be determined by the court; provided that the damages ordered shall not be less than \$250 nor more than \$5,000.”

SECTION 7. Section 482-5, Hawaii Revised Statutes, is amended to read as follows:

“§482-5 Penalty. Any person using such identical or similar print, label, ~~[trademark, service mark]~~ or trade name as set forth in section 482-4, shall be fined not more than \$1,000.”

SECTION 8. Section 482-6, Hawaii Revised Statutes, is amended to read as follows:

“§482-6 Revocation of certificate; nonuse. (a) If any print, label, ~~[trademark, service mark]~~ or trade name is not used by the registrant in accordance with the declaration either in ~~[the]~~ this State or elsewhere in the United States for a period of three hundred ~~[and]~~ sixty-five consecutive days, and the print, label, ~~[service mark, trademark,]~~ or trade name has not been registered in the name of the registrant in the patent and trademark office of the United States, the certificate of registration shall be subject to revocation.

(b) Any person desiring such revocation shall file a verified petition in the office of the director ~~[of commerce and consumer affairs]~~, setting forth facts indicating such nonuse for a period of three hundred ~~[and]~~ sixty-five consecutive days immediately preceding the date of the filing of the petition, and alleging the nonregistration in the patent and trademark office of the United States. The petitioner shall, at the petitioner’s expense, notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

(c) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 9. Section 482-7, Hawaii Revised Statutes, is amended to read as follows:

“§482-7 Application of law; reissue on nonuser. (a) Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director [~~of commerce and consumer affairs~~]; the intent [~~hereof~~] being that all prints, labels, [~~trademarks, service marks,~~] or trade names not used by the applicant in [~~the~~] this State or elsewhere in the United States and not registered in the name of the applicant in the patent and trademark office of the United States may be immediately reissued to such applicant who is actually using the same.

(b) The fact that a print, label, [~~trademark, service mark,~~] or trade name has not been used in [~~the~~] this State for a period of one year shall be prima facie proof of the fact that the same has not been used elsewhere for such period.”

SECTION 10. Section 482-8, Hawaii Revised Statutes, is amended to read as follows:

“§482-8 Revocation of certificate; ownership. (a) Any person claiming to be the owner of a print, label, [~~service mark, trademark,~~] or trade name for which a certificate of registration pursuant to this chapter has been issued to any other person shall file a verified petition in the office of the director [~~of commerce and consumer affairs~~] for the revocation of the registration of such print, label, [~~service mark, trademark,~~] or trade name. The petition shall set forth facts in support of the ownership by such petitioner of such print, label, [~~service mark, trademark,~~] or trade name and in support of the claim of the petitioner that the certificate of registration should be revoked.

(b) The petitioner shall, at the petitioner’s expense, notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5 and the registrant shall be given the opportunity of a [~~full~~] hearing in accordance with chapter 91.

(c) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 11. Section 482-9, Hawaii Revised Statutes, is amended to read as follows:

“§482-9 Appeal. Any person aggrieved by any action of the director [~~of commerce and consumer affairs~~] under this chapter in issuing or revoking a certificate of registration of a print, label, [~~trademark, service mark,~~] or trade name or [~~in revoking any such certificate of registration or~~] in denying an application may, within thirty days after the action by the director, or in the event no order has been entered either granting or denying the application within four months after the filing of the application, commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. The trial by the circuit court of any such proceeding shall be de novo. Proceedings for review by the supreme court may be had and taken in the same manner as is provided for a review of a judgment of a circuit court.”

SECTION 12. Section 482-10, Hawaii Revised Statutes, is amended to read as follows:

“§482-10 Registration of name, title, or other mark or device on bottles, siphons, tins, kegs, or other containers. Any person engaged in manufacturing, bottling, selling, or distributing soda water, mineral or aerated water, porter, ale, beer, cider, ginger ale, milk, cream, or other beverages or mixtures in bottles, siphons, tins, kegs, or other containers with the person’s name, title, or other mark or device branded, stamped, engraved, [Ø] etched, blown, impressed, or otherwise produced in or on such bottles, siphons, tins, kegs, or other containers used by the person, may file in the office of the director [~~of commerce and consumer affairs~~] a description of the name, title, or other mark or device so used by the person, and cause [such] the description to be printed at least once in each week for two weeks successively in a newspaper published in the English language in the county where such manufacturing, bottling, selling, or distributing takes place or in some paper of general circulation published in the English language in [~~Honolulu;~~] the State; whereupon, such name, title, or other mark or device shall be deemed registered.”

SECTION 13. In codifying the part added to chapter 482, Hawaii Revised Statutes, by section 1 of this Act and references to new sections, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of new sections.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2003.

(Approved April 19, 2001.)

Note

1. So in original.

ACT 16

S.B. NO. 1078

A Bill for an Act Relating to the Uniform Securities Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

“§485-6 Exempt transactions. The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer distribution of an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during

- the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
 - (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
 - (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
 - (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
 - (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
 - (9) Any transaction pursuant to an offer ~~[directed by the offerer to not more than twenty-five persons]~~ to sell securities of an issuer, if the transaction is part of an issue which:
 - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) [in the State] during any [period of] twelve consecutive months[, whether or not the offerer or any of the offerees is then present in the State, if all buyers represent that they are purchasing for investment (rather than with a present view to resale) and the seller reasonably accepts their representations as true, and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer;];
 - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
 - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
 - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
 - (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
 - (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;

- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
- (13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
- (14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "apartment", "condominium", and "project" are defined as they are defined in section 514A-3;
- (15) (A) Any transactions not involving a public offering[, and in addition, any categories of transactions effected in accordance with any rules the commissioner may adopt under chapter 91 pursuant to this paragraph with a view to uniformity with federal law;] within the meaning of section 4(2) of the Securities Act of 1933, but not including any transaction specified in the rules and regulations thereunder; or
 (B) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations section 230.501, under the Securities Act of 1933;
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
 - (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any

issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:

- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
- (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
- (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
- (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
 - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
- (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a); ~~and~~
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E)[-]; and
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933."

SECTION 2. Section 485-12, Hawaii Revised Statutes, is amended to read as follows:

"§485-12 Commissioner as agent to accept service; ~~[consent to;]~~ actions in what circuit; notice to issuer. (a) Upon any notice filing under section 485-4.5, any application for registration by notification under section 485-9 made by an

issuer, or any application for registration by qualification under section 485-10, whether made by an issuer or registered dealer, there shall be filed with the initial notice filing or the application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of this chapter, the service on the commissioner of securities of any notice, process, or pleading therein, authorized by the laws of the State, shall be as valid and binding as if due service had been made on the issuer.

(b) Any action shall be brought either in the circuit of the plaintiff's residence or in the circuit in which the commissioner has the commissioner's office. ~~[The written consent shall be authenticated by the seal of the issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it is an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same.]~~

(c) In case any process or pleadings mentioned in this chapter are served upon the commissioner, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which the process or pleadings are directed."

SECTION 3. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

"§485-14 Registration of dealers, investment advisers, salespersons, and investment adviser representatives. (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, salesperson, or investment adviser representative unless registered under this chapter. However, nothing in this chapter shall prevent the commissioner from participating, in whole or in part, in the Central Registration Depository system, in cooperation with the National Association of Securities Dealers, Inc., other states, and the United States, to the extent participation is deemed to be in the public interest of this State.

(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer, an applicant shall have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesperson or experience as a security salesperson on a part-time basis found by the commissioner of securities to be substantially equivalent thereto; provided that this experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.

(c) Application for registration as a dealer. An application for registration as a dealer shall be filed ~~[in]~~ with the office of the commissioner in such form as the commissioner may prescribe ~~[, duly verified by oath, and shall state the principal office of the applicant wherever situated, and the location of the principal office and branch offices in the State, if any, the name and style of doing business, the names, residence, and business of principals, copartners, officers, and directors, specifying as to each person's capacity and title, the general plan and character of business, the length of time the dealer has been engaged in business and information as to the time, place, and character of experience as a securities salesperson.]~~ by rule or order. The commissioner may also require ~~[such]~~ additional information ~~[as to]~~ regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) ~~[Any]~~ Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) ~~[Whether]~~ Disclosure as to whether the dealer, or any person employed by or associated in business with the dealer, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the dealer under section 485-15; and
- (4) Any other information that the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed in or with such application an irrevocable ~~[written]~~ consent to the service of process upon the commissioner in actions against the dealer in manner and form ~~[provided in section 485-12.]~~ prescribed by the commissioner by rule or order.

(d) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser shall have complied with the mandatory provisions of this section, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the applicant's knowledge of the securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. ~~[Every person required to take such an examination at or before the time of the examination, shall pay to the commissioner a fee of \$250.]~~

(e) Registration of investment advisers. An application for registration~~[, duly verified by oath by the applicant, and]~~ as an investment adviser, in such form as the commissioner ~~[shall]~~ may prescribe[;] by rule or order shall be filed ~~[in]~~ with the office of the commissioner ~~[accompanied by an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12; the applicant's photograph; and a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:~~

- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser's principal business office and branch offices, if any; the names and addresses of the investment adviser's partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of the individual; and the number of the investment adviser's employees;
- (2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser's partners, officers, directors, and persons performing similar functions and of any controlling person thereof;
- (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
- (4). The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) A balance sheet certified by an independent public accountant and other certified financial statements if the investment adviser has custody of or discretionary authority over client money, securities, or other assets, or an unaudited, verified balance sheet and financial statements if the investment adviser has no custody of or discretionary authority over client money, securities, or other assets. If the investment adviser maintains its principal place of business in a state other than this State

and the investment adviser is registered in that state and in compliance with its financial reporting requirements, this requirement shall be deemed satisfied by the investment adviser filing with the commissioner a copy of those financial statements, if any, that are required to be filed by the adviser in the state where it maintains its principal place of business;

- ~~[(5) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;~~
- ~~(6) The basis or bases upon which the investment adviser is compensated;~~
- ~~(7) Whether] (2) Disclosure as to whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;~~
- ~~[(8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser;] and~~
- ~~[(9)] (3) Other information as to the applicant's previous history, record, and association that the commissioner deems necessary including:~~
 - ~~(A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;~~
 - ~~(B) The applicant's financial condition and history; and~~
 - ~~(C) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.~~

[The] To the extent appropriate, the¹ commissioner [may] shall use [a] uniform registration [form] application forms adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934[; provided the form encompasses the information required under this section.] for purposes of this section; and shall, to the extent appropriate, permit the electronic filing of such forms through the Central Registration Depository or the Investment Adviser Registration Depository of the National Association of Securities Dealers.

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for registration, then the commissioner shall register the applicant as a dealer upon payment of the fee hereinafter provided and, except as otherwise provided in this subsection, upon the dealer's filing of a bond in the sum of \$5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salespersons registered by the dealer while acting for the dealer. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that no bond is required of or from any applicant if the applicant at the time of making application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than \$5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than \$5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of the person's intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than \$5,000 no more than one sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond, any dealer may deposit and keep deposited with the commissioner cash in the amount of \$5,000 or securities to be approved by the

commissioner having a market value at all times of not less than \$5,000 which cash or securities shall be held in trust to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same. No bond shall be required under this section or under this chapter of any dealer that is registered under the Securities Exchange Act of 1934.

(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided, and, except as otherwise provided in this subsection, upon the investment adviser filing a bond in the sum of \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities, or other assets. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, except as otherwise provided in this subsection, the investment adviser shall file with the commissioner a certificate of insurance which indicates that the investment adviser's business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client, or shall meet an alternative requirement which also provides for the protection of the client of the investment adviser, as determined by rules adopted by the commissioner. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net capital and bonding requirements, if any.

(h) Eligibility for registration as a salesperson. To be eligible for registration under this chapter, a salesperson shall have complied with the mandatory provisions of this section, shall be designated as a salesperson by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the salesperson's knowledge of the securities business. Every person required to take such an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. However, registration is not required of a salesperson who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. No person shall be designated as a salesperson by, or shall act as a salesperson for, more than one registered dealer.

(i) Registration of salespersons. ~~[An information statement, containing information that the commissioner shall prescribe, shall be filed where prescribed by the commissioner, together with an appointment of the applicant as a salesperson by a~~

registered dealer.] An application for registration as a salesperson shall be filed by a registered dealer with the office of the commissioner in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial condition and history [~~and condition~~];
- (3) Disclosure as to whether the salesperson or any person associated in business with the salesperson is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the salesperson under section 485-15; and
- (4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds a salesperson designated by any registered dealer to be eligible for registration as a salesperson, the commissioner shall register the person as a salesperson upon the payment of the fee hereinafter provided.

(j) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter, an investment adviser representative shall have complied with the mandatory provisions of this section, shall be designated as a representative by a federal covered adviser or a registered investment adviser, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the representative's knowledge of the investment advisory and securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. [~~Every person required to take an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner.~~] No person shall be designated as an investment adviser representative by, or shall act as an investment adviser representative for, more than one federal covered adviser or registered investment adviser.

(k) Registration of investment adviser representative. An [~~information statement, containing information that the commissioner shall prescribe, duly verified by oath by the applicant,~~] application for registration as an investment adviser representative shall be filed [in] with the office of the commissioner[~~, together with an appointment of the applicant as an investment adviser representative by a registered investment adviser if the representative is seeking registration with an investment adviser.~~] in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- [~~(2) The applicant's financial history and condition;~~]
- [~~(3)~~] (2) Disclosure as to whether the investment adviser representative, or any person associated in business with the investment adviser representative, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser representative under section 485-15; and
- [~~(4)~~] (3) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds an investment adviser representative designated by any federal covered adviser or investment adviser to be eligible for registration as an investment adviser representative, the commissioner shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided.

(l) Recording; duration; renewal; fee. The names and business addresses of all persons ~~[found eligible for registration]~~ registered under this chapter as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be ~~[recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner and shall be]~~ open to public inspection. Except as ~~[hereinafter provided,]~~ otherwise provided by the commissioner by rule or order, every registration for ~~[investment advisers and investment adviser representatives under this section shall expire on December 31 in each odd-numbered year, and every registration for]~~ dealers ~~[and]~~, investment advisors, salespersons, and investment adviser representatives under this section shall expire on December 31 of each year ~~[-]~~ unless renewed prior to expiration. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the ~~[expiration]~~ year ~~[or]~~, unless the dealer, investment adviser, salesperson, or investment adviser representative is registered with the commissioner through the Central Registration Depository system or the Investment Adviser Registration Depository in which case the renewal shall be filed with the commissioner as provided through [the Central Registration Depository] that system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 ~~[of the expiration year]~~ shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be ~~[revoked or]~~ terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the ~~[revocation]~~ termination shall take effect as of the date and time of filing of the notice. ~~[Upon revocation or termination of the registration of any dealer, investment adviser, salesperson, or investment adviser representative, the dealer's, investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation.]~~ The fee for registration and for each renewal shall be \$200 in the case of dealers ~~[and]~~, \$100 in the case of investment advisers, and \$50 in the case of salespersons and investment adviser representatives.

(m) Changes. ~~[Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers, or directors of any dealer's or investment adviser's business may be made from time to time by written application setting forth the facts with respect to such change.]~~ If any information contained in an application for registration filed with the commissioner under this chapter becomes inaccurate or changes, the registrant shall promptly file a correcting amendment with the commissioner. If the registrant is a salesperson or investment adviser representative, the dealer or investment adviser with which such registrant is affiliated or employed by shall file the amendment with the commissioner.

(n) Announcement of registration application. The commissioner, by rule, may require an applicant for initial registration as a dealer, investment adviser, salesperson, or investment adviser representative to publish an announcement of the application in one or more newspapers of general circulation in this State.

(o) (n) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of the dealer's intention to do so. The notice shall contain the name of the dealer and shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the

contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

~~[(p)]~~ (o) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond, or deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in the commissioner's discretion, which amount, however, shall not be less than \$5,000, nor more than \$25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salespersons in the manner herein prescribed in the case of dealers.

~~[(q)]~~ (p) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. Except as otherwise provided in this subsection, the commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than \$5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. This subsection shall not apply to any dealer that is registered under the Securities Exchange Act of 1934. The commissioner may by rule require a net worth requirement which shall not be less than \$5,000 for investment advisers. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any.

~~[(r)]~~ (q) A registered broker dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee for registration of a successor."

SECTION 4. Section 485-23, Hawaii Revised Statutes, is amended to read as follows:

"§485-23 Appeals to circuit court, first circuit; time; bonds; costs; ~~[trial de novo;] decree; further appeal.~~ An appeal may be taken by any aggrieved person from any final order of the commissioner of securities to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant. The appeal shall be ~~[heard de novo;]~~ conducted without a jury and confined to the record, and it may be given precedence by the court over other matters pending in the court. ~~[The court shall receive and consider evidence, whether oral or documentary, concerning the order of the commissioner from whom the appeal is taken;]~~ If the order of the commissioner is reversed the court shall by its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained; provided that the commissioner shall not thereby be barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order is affirmed, the appellant shall not be barred after thirty days from filing a new application provided the application is not otherwise barred or limited. The appeal shall not in anywise suspend the operation of the order appealed

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from during the pendency of the appeal unless upon proper order of the commissioner or the court. An appeal may be taken from the decree of the circuit court to the supreme court.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved April 19, 2001.)

Note

1. “The” should be underscored.

ACT 17

H.B. NO. 22

A Bill for an Act Relating to Time Sharing Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-1, Hawaii Revised Statutes, is amended by amending the definition of “acquisition agent” to read:

““Acquisition agent” means any person, other than a developer or sales agent, who, for compensation, solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer~~[-];~~ provided that this term shall not include individuals who perform the stated activities and are employed by or in contract with:

- (1) A real estate broker who is licensed under chapter 467; or
- (2) An acquisition agent registered pursuant to section 514E-10.”

SECTION 2. Section 514E-2.5, Hawaii Revised Statutes, is amended to read as follows:

“§514E-2.5 Licensing of sales agents and acquisition agents. (a) Except as provided in section 467-2, no sales agent ~~[or acquisition agent]~~ shall act or assume to act as a real estate salesperson or a real estate broker without a license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission. ~~[No sales agent or]~~

(b) Except as provided in section 467-2, no acquisition agent shall solicit or encourage others to attend a time share sales presentation or to contact a time share sales agent or developer except as otherwise provided for by rules adopted by the director pursuant to chapter 91 without a real estate broker’s license previously obtained under and in compliance with chapter 467 and the rules and regulations of the real estate commission~~[-]~~ or without registering as required by section 514E-10.

[(b)] (c) The director shall adopt rules ~~[and regulations]~~ limiting the activities of and governing sales agents and acquisition agents, regardless of whether ~~[or not]~~ such persons are also licensed under chapter 467. Such regulations:

- (1) May authorize an acquisition agent who is not licensed under chapter 467 and its employees to invite others to attend a time share sales presentation or an entertainment function offered in connection therewith, so long as such invitation is made from a principal place of business, branch office, site office, or booth operated in accordance with state and county laws by ~~[a person licensed under chapter 467 as a real estate broker;]~~ the acquisition agent;
- (2) May authorize an acquisition agent who is not licensed under chapter 467 and its employees to extend invitations from a booth without

requiring the physical presence of a person licensed under chapter 467[~~;~~]; provided that the acquisition ~~[agent remains]~~ agent's employees remain in the booth at all times;

- (3) Shall provide that any ~~[acquisition agent not licensed under chapter 467]~~ individual, who for compensation solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer, shall be employed, either directly or as an independent contractor, by a sales agent or acquisition agent ~~[who in either case is licensed as a real estate broker under chapter 467];~~
- (4) Shall provide that a real estate broker or acquisition agent who employs, either directly or as an independent contractor, an ~~[acquisition agent]~~ individual, who is not licensed under chapter 467, to solicit or encourage others to attend a time share presentation or to contact a time share sales agent or developer, shall be responsible for the acts of such ~~[acquisition agent's]~~ employee;
- (5) Shall establish rules and conditions strictly regulating and, if legally permissible, prohibiting telephone solicitation of guests in hotels; and
- (6) Shall establish such other rules as the director deems to be in the public interest.

~~[(e)]~~ (d) If the director determines, after notice and a hearing, that an acquisition agent [or sales agent] has violated any provision of this chapter or any rule or regulation adopted by the director pursuant to this chapter, the director may suspend or revoke the registration of such person as an acquisition agent[~~;~~ or sales agent].

(e) If the real estate broker's license, issued under chapter 467, of an acquisition agent or sales agent is forfeited, suspended, revoked, terminated, or placed on inactive status, the acquisition agent or sales agent shall not act as an acquisition agent or sales agent under this chapter."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

ACT 18

H.B. NO. 23

A Bill for an Act Relating to Deceptive Trade Practices for Time Share Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-11.1, Hawaii Revised Statutes, is amended to read as follows:

"§514E-11.1 Deceptive trade practices. It shall constitute an unfair or deceptive practice, within the meaning of chapter 480, for any developer, acquisition agent, or sales agent of time share units or plans to:

- (1) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements without fully disclosing that the device is being used for the purpose of soliciting sales of time share interests;

- (2) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan, if ~~[in order]~~ to claim the prize or gift, the prospective purchaser must attend a sales presentation, unless the written disclosure described in section 514E-11(3) is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type;
- (3) Fail to inform each purchaser orally and in writing, at the time the purchaser signs the contract, of the purchaser's seven-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (4) Misrepresent in any manner the purchaser's right to cancel or void any contract to purchase a time share interest in a time share plan or unit;
- (5) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (6) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser~~[-]~~ and, within fifteen business days after receipt of such notice, fail or refuse to refund all payments made under the contract or sale; or fail or refuse to cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any appropriate action to terminate promptly any mortgage, lien, or other security interest created in connection with the transaction;
- (7) ~~Fail to include [on promotional literature and other printed or written material the caption "THIS IS A TIME SHARING SALES PRESENTATION" (in capital letters of 24 point bold type, or type as large as the largest printing or writing elsewhere in the material), under which must be printed (in type of the same size as the caption described above)]~~ above the signature line of any sales contract or, if no sales contract is used, above the signature line of any agreement with the purchaser, in conspicuous bold type and capital letters, the following: "Any purchaser has, under the law, a seven-day right of rescission of any time sharing sales contract";
- (8) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
- (9) Misrepresent or deceptively represent the location or locations of the offered time share unit;
- (10) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
- (11) Misrepresent the nature or extent of any services incident to the time share unit;
- (12) Misrepresent the conditions under which a purchaser may exchange the purchaser's occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location; ~~[or]~~
- (13) Fail to orally disclose during the initial oral contact with a prospective purchaser that any promised entertainment, prizes, gifts, food and drinks, games, or other inducements are being offered for the purpose of soliciting sales of time share interests in time share units or plans~~[-];~~
or
- (14) Fail to include in promotional literature and other printed or written material a disclosure that the product or activity involves time share. The director may by rule prescribe the nature of the disclosure."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2002.

(Approved April 25, 2001.)

ACT 19

H.B. NO. 216

A Bill for an Act Relating to Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that current direct flights between Lihue airport and the continental United States benefit the economy of the State and should be continued. Tesoro Hawaii Corporation currently supplies all the jet fuel needs for Lihue airport. Tesoro unloads its jet fuel at Nawiliwili harbor, stores the fuel in storage tanks owned by Shell Oil Company, and then transports the fuel to the airport in tanker trucks. To meet current jet fuel requirements for Lihue airport, Tesoro's operation requires the use of storage tanks owned by Shell.

Shell's fuel storage facility is located on state land and Shell currently occupies the land pursuant to a month-to-month revocable permit. The department of transportation would like to have a long-term lease issued for the fuel storage facility. Chapter 171, Hawaii Revised Statutes, however, generally requires that leases of state land be issued through a public auction process.

Shell has informed the State that if an auction for the fuel storage facility land were held, and Shell was not the successful bidder, it would have to remove the fuel storage tanks and remediate the site to minimize Shell's hazardous material liability. If Shell did remove its facilities, it is estimated that construction of new jet fuel storage tanks would take approximately three years and result in a disruption of jet fuel for Lihue airport.

The purpose of this Act is to temporarily exempt the leasing of facilities at Nawiliwili harbor from the public auction requirements for leasing public lands.

SECTION 2. Notwithstanding any other law to the contrary, the department of transportation, subject to the approval of the board of land and natural resources, may negotiate a lease for the existing fuel storage facility at Nawiliwili harbor without regard to the limitations set forth in chapter 171, Hawaii Revised Statutes.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved April 25, 2001.)

ACT 20

H.B. NO. 240

A Bill for an Act Relating to Check Cashing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 146, Session Laws of Hawaii 1999, is amended by amending section 2 to read as follows:

“SECTION 2. This Act shall take effect on July 1, 1999[~~and shall be repealed on July 1, 2001~~].”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

ACT 21

H.B. NO. 662

A Bill for an Act Relating to Criminal Penalties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 342J-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility [~~which~~] that does not have a permit pursuant to section 342J-5 to treat, store, or dispose of that particular hazardous waste;
- (2) Treats, stores, or disposes of hazardous waste without first having a permit pursuant to section 342J-5, or who violates any term or condition of a permit or variance issued pursuant to this chapter;
- (3) Transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil or used oil fuel in violation of any rules adopted pursuant to this chapter relating to used oil or used oil fuel; [~~or~~]
- (4) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with this chapter, including compliance with any rules adopted pursuant to this chapter relating to used oil or used oil fuel; or
- (5) Abandons or causes to be abandoned any hazardous waste, used oil, or used oil fuel;

~~shall be subject to criminal penalties [of not more than \$25,000 for each day of each violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of each violation, or by imprisonment for not more than two years, or both]. Violations of paragraphs (3) and (4) are misdemeanor offenses. In addition to any other sentence, a person who violates paragraph (3) or (4) may be ordered to pay a fine not to exceed \$25,000 for each day of each violation.~~

Violations of paragraphs (1), (2), and (5) are class C felonies. In addition to any other sentence, a person who violates paragraph (1), (2), or (5) may be ordered to pay a fine not to exceed \$25,000 for each day of each violation.

For purposes of this subsection, “abandon” means the act of deserting or leaving behind a hazardous waste, used oil, or used oil fuel.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

ACT 22

H.B. NO. 761

A Bill for an Act Relating to Unaccredited Degree Granting Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 446E-2, Hawaii Revised Statutes, is amended to read as follows:

“§446E-2 Disclosures. (a) Any unaccredited institution shall disclose in all catalogs, promotional materials, and contracts for instruction, the fact that the institution is not accredited by any nationally recognized accrediting agency listed by the United States Secretary of Education. The disclosure shall be made in a type size as large or larger than any other text in the catalog, promotional material, or contract for instruction, excluding the name of the unaccredited institution, and shall be presented in a manner reasonably calculated to draw the attention of the reader. If the unaccredited institution includes in its catalogs, promotional materials, or contracts for instruction any other information relating in any manner to accreditation, or to accreditation by an agency not nationally recognized by the United States Secretary of Education, the disclosure required by this subsection shall be repeated on every page on which the information appears. Where the information is presented electronically, the disclosure shall be made directly preceding or following the information. The disclosure shall read as follows:

(Name of Degree Granting Institution) IS NOT ACCREDITED
BY AN ACCREDITING AGENCY
RECOGNIZED BY THE UNITED STATES
SECRETARY OF EDUCATION.

Note: In the United States, many licensing authorities require accredited degrees as the basis for eligibility for licensing. In some cases, accredited colleges may not accept for transfer courses and degrees completed at unaccredited colleges, and some employers may require an accredited degree as a basis for eligibility for employment.

(b) Where promotional material for an unaccredited institution consists of an advertisement in a periodical published by a person or entity that is not affiliated with the unaccredited institution, the disclosure required in subsection (a) may be abbreviated to state as follows: NOT ACCREDITED BY AN AGENCY RECOGNIZED BY THE U.S. SECRETARY OF EDUCATION. The disclosure required under this subsection shall be made in a type size as large or larger than any other text in the advertisement.

~~[(b)]~~ (c) Every unaccredited institution subject to this chapter shall keep true and accurate records of student enrollment, courses, fees, and matriculation rates. These records shall be retained for five years. Upon demand, these records, and any other information requested or subpoenaed by the director, shall be made available to the director.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

A Bill for an Act Relating to Land Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

“§501-108 Conveyance of fee; procedure. (a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that no deed, mortgage, lease, or other voluntary instrument shall be accepted by the assistant registrar [shall not accept] for registration [any deed, mortgage, lease, or other voluntary instrument,] unless a reference to the number of the certificate of title [and an indorsement of the current certificate of title, if applicable,] of the land affected by such instrument is incorporated in the body of the instrument tendered for registration. If the certificate reference in the instrument is not current, an endorsement of the current certificate of title shall be required.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number in the spaces provided therefor wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped “canceled”. The deed of conveyance shall be filed or recorded and ~~[indorsed]~~ endorsed with the number and place of registration of the certificate of title of the land conveyed.

(b) On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. ~~[Indorsements,]~~ Endorsements, if any, ~~[shall]~~ may be made on a conforming fly sheet. If an instrument consists of more than one page, each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

(c) All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, ~~[or]~~ legibly printed by hand, or by ~~[some other]~~ a mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary’s certificate of acknowledgment. The provisions of this subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(d) The assistant registrar may refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by ~~[fourteen]~~ eleven inches, or that contains a schedule, inventory sheet, or map in excess of that size.”

SECTION 2. Section 501-171, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto shall file or record with the assistant registrar of the land court a correct statement of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the devisee or devisees, and thereupon the assistant registrar shall cancel the certificate issued to the testator, and enter a new certificate to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law shall file or record with the assistant registrar a correct statement of the full names of the heirs, the residence or post office address of each, and their marital status, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the heir or heirs, and thereupon the assistant registrar shall cancel the certificate issued to the intestate, and enter a new certificate to the heir or heirs entitled thereto.”

SECTION 3. Section 501-173, Hawaii Revised Statutes, is amended to read as follows:

“§501-173 Purchaser acquiring title through personal representative may have the same registered. If any personal representative is authorized by the terms of any will to grant, bargain, sell, convey, mortgage, or otherwise deal with registered land, the personal representative may do so in the same manner as if the land were registered in the representative’s name as personal representative. Before any instrument executed by the personal representative, pursuant to such authority, is filed or recorded with the assistant registrar of the land court, there shall be first filed or recorded with the assistant registrar a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an order granting the petition for authority, or [an] a certified copy of an acknowledgment of authority, and either a certified copy of the order of the circuit court confirming the sale of the affected land or a certified copy of an affidavit filed in the circuit court of the personal representative made at the time of the deed, mortgage, lease, or other conveyance, attesting that the decedent’s will does not require confirmation of the transaction and that no devisee or heir has demanded the confirmation. Any person who acquired title or any interest in registered land through or by virtue of the execution of the power vested in the personal representative may have the title or interest registered.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-626, Hawaii Revised Statutes, is amended to read as follows:

“§706-626 Summons or arrest of defendant on probation; commitment without bail. At any time before the discharge of the defendant or the termination of the period of probation:

- (1) The court may, in connection with the probation, summon the defendant to appear before it or may issue a warrant for the defendant's arrest;
- (2) A probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest the defendant without a warrant and the defendant shall be held in custody pending the posting of bail pursuant to a bail schedule established by the court, or until a hearing date is set; provided that when the punishment for the original offense does not exceed one year, the probation or peace officer may admit the probationer to bail; or
- (3) The court, if there is probable cause to believe that the defendant has committed another crime or has been held to answer therefor, may commit the defendant without bail, pending a determination of the charge by the court having jurisdiction thereof.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved April 25, 2001.)

Note

1. No bracketed and stricken material.

A Bill for an Act Relating to Collection Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 443B-18, Hawaii Revised Statutes, is amended to read as follows:

“[§443B-18] Fraudulent, deceptive, or misleading representations. No collection agency shall use any fraudulent, deceptive, or misleading representation or means to collect, or attempt to collect, claims or to obtain information

concerning a debtor or alleged debtor, including any conduct which is described as follows:

- (1) The use of any company name while engaged in the collection of claims other than the true name of the collection agency;
- (2) The failure to disclose clearly ~~[in all]~~:
 - (A) In the initial written and initial oral communication made to collect, or attempt to collect, a claim or to obtain, or attempt to obtain, information about a debtor or alleged debtor that the collection agency is attempting to collect a claim and that any information obtained will be used for that purpose; and
 - (B) In subsequent communications that the communication is from a debt collector;
provided that this paragraph shall not apply to a formal pleading made in connection with a legal action;
- (3) Any false representation that the collection agency has in its possession information or something of value for the debtor or alleged debtor that is made to solicit or discover information about the debtor or alleged debtor;
- (4) The failure to disclose clearly the name and full business address of the person to whom the claim has been assigned for collection or to whom the claim is owed at the time of making any demand for money;
- (5) Any false representation or implication of the character, extent, or amount of a claim against a debtor or alleged debtor, or of its status in any legal proceeding;
- (6) Any false representation or false impression that any collection agency is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of, this State or any agency of federal, state, or local government;
- (7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;
- (8) Any representation that an existing obligation of the debtor or alleged debtor may be increased by the addition of attorney's fees, investigation fees, service fees, and any other fees or charges when in fact the fees or charges may not legally be added to the existing obligations; or
- (9) Any false representation or false impression about the status or true nature of, or the services rendered by, the collection agency or its business."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

A Bill for an Act Relating to Farming.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 165-2, Hawaii Revised Statutes, is amended to read as follows:

“§165-2 Definitions. As used in this chapter, unless the context otherwise requires:

[“Established date of operation” means the date on which the original farming operation first commenced operation. If the physical facilities of the farming operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original operation, provided that this does not violate existing state law or county ordinances.]

“Farming operation” means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, [and] apiary[, horticultural, or floricultural products;] products, and plant and animal production for nonfood uses; the planting, cultivating, [and] harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. “Farming operation” also includes[.] but shall not be limited to[~~-, marketed~~]:

- (1) Marketed produce at roadside stands or farm markets; ~~[noises;]~~
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit; ~~[operation]~~
- (3) Operation of machinery and irrigation pumps; ~~[ground]~~
- (4) Ground and aerial seeding and spraying; ~~[the]~~
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and [the]
- (6) The employment and use of labor.

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

“Nuisance” means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare. “Nuisance” as used in this chapter, includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding.”

SECTION 2. Section 165-4, Hawaii Revised Statutes, is amended to read as follows:

“§165-4 Right to farm. (a)¹ No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if ~~[all of the following have been proven:~~

- (1) ~~That during the twelve-month period preceding the filing of the nuisance complaint with a court or other adjudicative public body, the farming operation complied with statutes, ordinances, regulations, or rules relevant to the nuisance complaint; and~~
 - (2) ~~That the farming operation has used reasonable care in conducting its operation.~~
 - (b) ~~Notwithstanding a farming operation's satisfaction of subsection (a)(1) and (2), a farming operation may be declared a nuisance if:~~
 - (1) ~~The farming operation or any aspect thereof has been previously determined to be injurious to public health or safety by the department of health, the department of agriculture, or a court of competent jurisdiction; and~~
 - (2) ~~The complainant establishes by a preponderance of the evidence that the alleged nuisance resulted from the injurious operation or aspect thereof. Any determination of injuriousness shall be in writing and shall set forth the bases for the determination.]~~
- the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

Note

- 1. No subsection (b).

ACT 27

S.B. No. 175

A Bill for an Act Relating to Time Sharing Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-10, Hawaii Revised Statutes, is amended to read as follows:

"§514E-10 Registration required; developer, acquisition agent, [sales agent,] plan manager, and exchange agent. (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the time share plan to be offered by the developer is accepted by the director for registration under this chapter. The director shall not accept a developer's time share plan if the developer does not possess a history of honesty, truthfulness, financial integrity, and fair dealing.

(b) An acquisition agent (including the developer if it is also the acquisition agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan for which it is providing prospective purchasers, its address, the telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the acquisition agent is not a natural person, the name of the responsible managing employee[-]; provided that an

acquisition agent licensed under chapter 467 as a real estate broker shall not be required to register under this chapter. All acquisition agents not licensed under chapter 467 shall be approved by the director. The director shall not approve any acquisition agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The acquisition agent shall furnish evidence that [(1)] the acquisition agent is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any violation by the acquisition agent of any solicitation ordinance or other regulation governing the use of the premise or premises in which the time share plan is promoted; provided that the acquisition agent shall be separately bonded for each time share plan for which it is providing prospective purchases[; or (2) that the acquisition agent is currently licensed pursuant to chapter 467 as a real estate salesperson or a real estate broker and the acquisition agent's activities as such are covered by the real estate recovery fund established pursuant to chapter 467].

~~[(e)] A sales agent (including the developer if it is also the sales agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan that it is selling, its address, telephone number, other information required by the director as provided by rules adopted pursuant to chapter 91, and, if the sales agent is not a natural person, the name of the responsible managing employee, and the escrow account required under section 514E-16 for the deposit and collection of purchasers' funds. The director shall not approve any sales agent who is not of good character and who does not possess a reputation for honesty, truthfulness, and fair dealing. The sales agent shall furnish evidence that the sales agent is currently licensed pursuant to chapter 467 as a real estate salesperson or real estate broker and the sales agent's activities as such are covered by the real estate recovery fund established pursuant to chapter 467.~~

~~(d)]~~ (c) A plan manager (including the developer if it is also the plan manager) shall register under this chapter by filing with the director a statement setting forth the time sharing plan that it is managing, its principal office address, telephone number, and responsible managing employee. The plan manager shall furnish evidence that the plan manager is bonded as required by rules adopted by the director pursuant to chapter 91 to cover any default of the plan manager and any of its employees of their duties and responsibilities; provided that the plan manager shall be separately bonded for each time share plan under the management of the plan manager.

~~[(e)]~~ (d) An exchange agent (including the developer if it is also an exchange agent) shall register under this chapter by filing with the director a statement setting forth the time sharing plan for which it is offering exchange services, its principal office address and telephone number, and designate its responsible managing employee.

~~[(f)]~~ (e) Any plan manager or developer registration required in this section shall be renewed by December 31 of each even-numbered year, and any acquisition agent[, sales agent,] or exchange agent registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this subsection shall not relieve the person required to register from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation to promptly file amendments or supplements to the disclosure statement, and to promptly supply the amendments or supplements to purchasers of time share interests."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

ACT 28

S.B. No. 840

A Bill for an Act Relating to Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 241-7, Hawaii Revised Statutes, is amended to read as follows:

“§241-7 Disposition of funds. All taxes collected under this chapter shall be state realizations; provided that, by June 30 of each fiscal year, the sum of [\$2,500,000] \$2,000,000 shall be deposited with the director of finance to the credit of the compliance resolution fund as established pursuant to section 26-9(o).”

SECTION 2. Section 412:3-113, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-113 [~~Publication of financial statements.~~] Availability of statement of assets and liabilities. Unless extended by the commissioner, within ten days after submission to the commissioner of its June 30 and December 31 financial statements, every Hawaii financial institution, except a nondepository financial services loan company or credit union, shall [publish] file with the commissioner its statement of assets and liabilities [in a newspaper of general circulation in this State.] which can readily be provided to the public. The statement shall be in a form prescribed by the commissioner and shall be prepared in accordance with section 412:3-108. The statement of assets and liabilities shall be made available to the public by the institution until the subsequent statement becomes available.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 1 of this Act shall take effect on July 1, 2001.

(Approved April 25, 2001.)

ACT 29

S.B. NO. 1111

A Bill for an Act Relating to Reimbursement for Noninstitutional Providers of Medical Care for Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Pursuant to section 346-59, Hawaii Revised Statutes, the department of human services determines the rates of payment to all Medicaid providers of medical care, and pays those amounts in accordance with the requirements of the appropriations act and the Social Security Act, as amended.

The purpose of this Act is to allow the department to change from the current method of reimbursement to non-institutional providers of medical care, which is based on the charges of providers in a specialty, to rates established by a fee schedule similar to that used by Medicare. The new fee schedule shall be referred to as the "Hawaii Medicaid fee schedule."

While modeled after the Medicare fee schedule, the fee schedule established by the department shall not adopt the Medicare reimbursement rates. Rather, the fee schedule shall reflect rates based on a percentage of the Medicare fee schedule for the year 2000. The percentage shall be based on legislative appropriation. Reimbursement rates for services not covered by Medicare shall also be included in the fee schedule. For the conversion to the new fee schedule and for future adjustments to the fee schedule, rates for non-Medicare services shall be adjusted in a manner equitable to rates for services covered by Medicare.

SECTION 2. Section 346-59, Hawaii Revised Statutes, is amended to read as follows:

"§346-59 Medical care payments. (a) The department shall adopt rules under chapter 91 concerning payment to providers of medical care. The department shall determine the rates of payment due to all providers of medical care, and pay such amounts in accordance with the requirements of the appropriations act and the Social Security Act, as amended. Payments to critical access hospitals for services rendered to medicaid beneficiaries shall be calculated on a cost basis using medicare reasonable cost principles.

(b) Rates of payment to providers of medical care who are individual practitioners, including doctors of medicine, dentists, podiatrists, psychologists, osteopaths, optometrists, and other individuals providing services, shall be based upon the ~~[most current profile available of customary fees and the percentage of the profile in proportion to the funds appropriated by the legislature.]~~ Hawaii Medicaid fee schedule. The amounts paid shall not exceed the maximum permitted to be paid individual practitioners or other individuals under federal law and regulation ~~[and shall not exceed the reasonable charge under the medicare program, based on the same profile base year selected by the legislature for the medicaid profiles],~~ the Medicare fee schedule for the current year, the state limits as provided in the appropriation act, [and] or the provider's billed amount.

The appropriation act shall indicate the percentage of the Medicare fee schedule for the year 2000 to be used as the basis for ~~[the appropriation of each fiscal year.]~~ establishing the Hawaii Medicaid fee schedule. ~~[If that percentage has been adjusted by the legislature,]~~ For any subsequent adjustments to the fee schedule, the legislature shall specify the extent of the adjustment in the appropriation act.

~~[This section notwithstanding, providers shall not be reimbursed an amount less than their existing payment rates unless a reduction is specifically intended and required by law.]~~

(c) In establishing the payment rates for other noninstitutional items and services, the rates shall not exceed the current Medicare ~~[reasonable charge,]~~ payment, the state limits as provided in the appropriation act, the rate determined by the department, ~~[and] or~~ or the provider's billed amount.

~~[(d) Notwithstanding any other provisions of this chapter, the department may establish a demonstration project which guarantees a six-month enrollment in a health maintenance organization under a risk contract and designated as such by the United States Department of Health and Human Services for those eligible public assistance recipients who voluntarily agree to participate in the project.~~

(e) ~~(d)~~ Payments to health maintenance organizations and prepaid health plans with which the department executes risk contracts for the provision of medical

care to eligible public assistance recipients may be made on a prepaid basis. The rate of payment per participating recipient shall be fixed by contract, as determined by the department and the health maintenance organization or the prepaid health plan, but shall not exceed the maximum permitted by federal rules and shall be less than the federal maximum when funds appropriated by the legislature for such contracts require a lesser rate. For purposes of this subsection, "health maintenance organizations" are entities approved as such, and "prepaid health plans" are entities designated as such by the Department of Health and Human Services; and "risk" means the possibility that the health maintenance organization or the prepaid health plan may incur a loss because the cost of providing services may exceed the payments made by the department for services covered under the contract.

[(f)] (e) The department shall prepare each biennial budget request for a medical care appropriation based upon the most current ~~[customary fee profile]~~ Hawaii Medicaid fee schedule available at the time the request is prepared.

The director shall submit a report to the legislature on or before January 1 of each year indicating an estimate of the amount of money required to be appropriated to pay providers at the maximum rates permitted by federal and state rules in the upcoming fiscal year."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on April 1, 2002.

(Approved April 25, 2001.)

ACT 30

S.B. NO. 1508

A Bill for an Act Relating to Offenses Against the Person.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-700, Hawaii Revised Statutes, is amended by amending the definition of "substantial bodily injury" to read as follows:

"Substantial bodily injury" means bodily injury which causes:

- (1) A major avulsion, laceration, or penetration of the skin;
- (2) A ~~[chemical, electrical, friction, or scalding]~~ burn of at least second degree severity;
- (3) A bone fracture;
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 25, 2001.)

A Bill for an Act Relating to Measurement Standards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 486-104, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§486-104[H]~~ Secondary standards and equipment. The State shall supply secondary standards and other equipment as is necessary to carry out the provisions of this chapter. These standards shall be verified ~~[, by comparison with the state standards,]~~ upon their initial receipt and at least once a year thereafter~~[-]~~ by comparison with:

- (1) The state standards; or
- (2) Upon written authorization of the administrator, suitable standards of another laboratory that is recognized or accredited by the National Institute of Standards and Technology as capable of providing traceable measurements at the level of accuracy and precision necessary to verify the secondary standards and equipment.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 245-51, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§245-51[H]~~ Sale of export cigarettes prohibited. It shall be unlawful for a person to sell or distribute in the State; to acquire, hold, own, possess, or transport for sale or distribution in the State, or to import or cause to be imported into the State for sale or distribution in the State any of the following cigarettes:

- (1) The package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating “for export only”, “U.S. tax-exempt”, “for use outside U.S.”, or similar wording;
- (2) The package of which does not comply with all requirements imposed by federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the specific warning labels specified in the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. section 1333;

- (3) The package of which does not comply with all federal trademark and copyright laws;
- (4) Imported into the United States on or after January 1, 2000, in violation of Title 26 U.S.C. section 5754 or any other federal law or regulation;
- (5) For which the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; [or]
- (6) For which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. section 1335a[-]; or
- (7) The package of which bears a cigarette brand name that is a registered United States trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand. "Participating manufacturer" means any signatory to the "Master Settlement Agreement", as the latter term is defined in section 675-2."

SECTION 2. Section 245-56, Hawaii Revised Statutes, is amended to read as follows:

"[§245-56] Affixing of cigarette tax stamps to export cigarettes or altered packages prohibited. [It shall be unlawful for any person to affix] A person shall be guilty of a class B felony if the person knowingly affixes any cigarette tax stamp required under this chapter to the package of any cigarettes described in section 245-51 or altered in violation of section 245-52."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 33

H.B. NO. 524

A Bill for an Act Relating to Computer Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding ten new sections to part IX to be appropriately designated and to read as follows:

"§708- Computer fraud in the first degree. (1) A person commits the offense of computer fraud in the first degree if the person knowingly, and with intent to defraud, accesses a computer without authorization and, by means of such conduct, obtains or exerts control over the property of another.

(2) In a prosecution for computer fraud in the first degree, it is a defense that the object of the fraud and the property obtained consists only of the use of the computer and the value of such use is not more than \$300 in any one-year period.

(3) Computer fraud in the first degree is a class B felony.

§708- Computer fraud in the second degree. (1) A person commits the offense of computer fraud in the second degree if the person knowingly, and with the intent to defraud, transfers, or otherwise disposes of, to another, or obtains control of, with the intent to transfer or dispose of, any password or similar information through which a computer, computer system, or computer network may be accessed.

(2) Computer fraud in the second degree is a class C felony.

§708- Computer damage in the first degree. (1) A person commits the offense of computer damage in the first degree if:

- (a) The person knowingly causes the transmission of a program, information, code, or command, and thereby knowingly causes unauthorized damage to a computer, computer system, or computer network; or
 - (b) The person intentionally accesses a computer, computer system, or computer network without authorization and thereby knowingly causes damage.
- (2) As used in this section, the “damage” must:
- (a) Result in a loss aggregating at least \$5,000 in value, including the costs associated with diagnosis, repair, replacement, or remediation, during any one-year period to one or more individuals;
 - (b) Result in the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;
 - (c) Result in physical injury to any person;
 - (d) Threaten public health or safety; or
 - (e) Impair the administration of justice.
- (3) Computer damage in the first degree is a class B felony.

§708- Computer damage in the second degree. (1) A person commits the offense of computer damage in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby recklessly causes damage.

(2) Computer damage in the second degree is a class C felony.

§708- Use of a computer in the commission of a separate crime. (1) A person commits the offense of use of a computer in the commission of a separate crime if the person knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:

- (a) Section 707-726, relating to custodial interference in the first degree;
- (b) Section 707-727, relating to custodial interference in the second degree;
- (c) Section 707-731, relating to sexual assault in the second degree;
- (d) Section 707-732, relating to sexual assault in the third degree;
- (e) Section 707-733, relating to sexual assault in the fourth degree;
- (f) Section 707-751, relating to promoting child abuse in the second degree; and
- (g) Section 712-1215, relating to promoting pornography for minors.

(2) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime.

§708- Forfeiture of property used in computer crimes. Any property used or intended for use in the commission of, attempt to commit, or conspiracy to

commit an offense under this part, or which facilitated or assisted such activity, shall be forfeited subject to the requirements of chapter 712A.

§708- Jurisdiction. For purposes of prosecution under this part, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

§708- Unauthorized computer access in the first degree. (1) A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

- (a) The offense was committed for the purpose of commercial or private financial gain;
 - (b) The offense was committed in furtherance of any other crime;
 - (c) The value of the information obtained exceeds \$5,000; or
 - (d) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.
- (2) Unauthorized computer access in the first degree is a class B felony.

§708- Unauthorized computer access in the second degree. (1) A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

- (2) Unauthorized computer access in the second degree is a class C felony.

§708- Unauthorized computer access in the third degree. (1) A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

- (2) Unauthorized computer access in the third degree is a misdemeanor.”

SECTION 2. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;
- (b) A prosecution for a class A felony must be commenced within six years after it is committed;
- (c) A prosecution for any felony under part IX of chapter 708 must be commenced within five years after it is committed;
- [~~(e)~~] (d) A prosecution for any other felony must be commenced within three years after it is committed;
- [~~(e)~~] (e) A prosecution for a misdemeanor or parking violation must be commenced within two years after it is committed; and
- [~~(e)~~] (f) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed.”

SECTION 3. Section 707-764, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§707-764]]~~ **Extortion.** A person commits extortion if ~~[he]~~ the person does any of the following:

- (1) Obtains, or exerts control over, the property or services of another with intent to deprive ~~[him]~~ another of ~~[the]~~ property or services by threatening by word or conduct to:
 - (a) Cause bodily injury in the future to the person threatened or to any other person; ~~[or]~~
 - (b) Cause damage to property~~[:]~~ or cause damage, as defined in section 708-890, to a computer, computer system, or computer network; ~~[or]~~
 - (c) Subject the person threatened or any other person to physical confinement or restraint; ~~[or]~~
 - (d) Commit a penal offense; ~~[or]~~
 - (e) Accuse some person of any offense or cause a penal charge to be instituted against some person; ~~[or]~~
 - (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair ~~[his]~~ the threatened person's credit or business repute; ~~[or]~~
 - (g) Reveal any information sought to be concealed by the person threatened or any other person; ~~[or]~~
 - (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; ~~[or]~~
 - (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; ~~[or]~~
 - (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property ~~[which]~~ that is not demanded or received for the benefit of the group ~~[which]~~ that the defendant purports to represent; or
 - (k) Do any other act ~~[which]~~ that would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to ~~[his]~~ the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; ~~[or]~~

(2) Intentionally compels or induces another person to engage in conduct from which ~~[he]~~ another has a legal right to abstain or to abstain from conduct in which ~~[he]~~ another has a legal right to engage by threatening by word or conduct to do any of the actions set forth in ~~[paragraphs (a)]~~ paragraph (1)(a) through (k) ~~[of this section]; or~~

(3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.”

SECTION 4. Section 708-890, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§708-890]]~~ **Definitions.** As used in this part, unless the context otherwise requires:

“Access” means to gain entry to ~~[or]~~, instruct, communicate with, store data in, reprieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

“Computer” means any ~~[device which performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a computer system or computer~~

network:] electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Computer equipment” [or “hardware” means central processing units, microprocessors, data storage and other computer memory devices, and computer terminals or similar devices.] means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

“Computer network” means two or more [computer systems connected so as to permit the exchange or sharing of data between or among them:] computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

“Computer program” or “software” means a set of computer-readable instructions or statements [which,] and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

“Computer services” [means data input, data output, data processing, or data storage by or in a computer system or computer network.] includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

“Computer system” means [computer equipment or hardware connected together and operating under the control of one or more computer programs:] a set of interconnected computer equipment intended to operate as a cohesive system.

“Damage” means any impairment to the integrity or availability of data, a program, a system, a network, or computer services.

“Data” means information [stored in a computer system or on electronic media or processed in a computer system:], facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

[“Disruption” means any deviation from normal operations of any computer, computer system, or computer network.

“Injury” includes addition, alteration, damage, deletion, destruction, denial of access with respect to data in, or functions of, a computer system or computer network.]

“Obtain information” includes but is not limited to mere observation of the data.

“Property” includes financial instruments, data, computer software, computer programs, documents associated with computer systems [and computer programs, or copies, whether tangible or intangible, and data while in transit:], money, computer services, or anything else of value.

“Rule of court” means any rule adopted by the supreme court of this State, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

“Statute” means any statute of this State or the federal government.

“Without authorization” means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant [such] the permission.”

SECTION 5. Section 708-891, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 708-892, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 708-893, Hawaii Revised Statutes, is repealed.

SECTION 8. There is established within the department of the attorney general for administrative purposes only, a temporary advisory commission on computer crimes laws.

The commission shall form a working committee to review the implementation of this Act and determine whether it allows the comprehensive prosecution of computer crimes without inhibiting legitimate computer activities.

The commission may include as members, representatives from the information and communication services division of the department of accounting and general services, University of Hawaii department of information technology service, department of the attorney general, the prosecuting attorneys, the county police departments, private citizens concerned with computer crimes, knowledgeable computer professionals from both the business and academic sectors, the office of the public defender, and Hawaii attorneys in private practice who handle criminal cases. Members of the committee should be selected based on knowledge and experience in criminal law, law enforcement and computer technology.

The commission shall meet no later than September 1, 2001, and on a regular basis thereafter as necessary to carry out the purpose of the commission. The commission shall prepare a comprehensive report of findings and recommendations for action. The commission shall transmit copies of their report to the legislature, the attorney general, the prosecuting attorneys, and the public defender no later than twenty days prior to the convening of the regular session of 2003.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 34

H.B. NO. 691

A Bill for an Act Relating to Penalties for the Statewide Trail and Access Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 198D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§198D- General administrative penalties. (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

(1) For a first violation, a fine of not more than \$2,500;

- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

§198D- Criminal penalties. (a) In addition to any other penalties, any person violating this chapter, any rule adopted pursuant to this chapter, or the terms and conditions of any permit issued in accordance with this chapter shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

(c) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 35

H.B. NO. 1173

A Bill for an Act Relating to Lodging or Tenement Houses, Hotels, and Boardinghouses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to eliminate the requirement of a county business license to operate lodging or tenement houses, hotels, and boardinghouses, and repeal the \$10 annual license fee.

SECTION 2. Section 46-15.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The respective counties may conduct inspections to enforce sections [445-92] 445-94 to 445-96. Each county may conduct its inspections without a warrant if the conditions enumerated in subsection (c) exist. A county shall conduct

its inspection with a warrant in accordance with this section if the circumstances enumerated in subsection (c) do not exist or if specific buildings or premises to be inspected can be identified through citizen complaint or by information obtained from state agencies under section 46-15.5. The issuance and execution of an administrative inspection warrant shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge's jurisdiction, may issue warrants for the purpose of conducting administrative inspections. The warrants shall be issued upon proper oath or affirmation showing probable cause that:
 - (A) The conditions of [a-license] operation under section 445-95 have been violated; or
 - (B) A person is operating a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, [or restaurant] without [a-license;] the certificates required under section 445-94;
- (2) A warrant shall [issue] be issued only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that there is probable cause to believe the grounds for issuing a warrant exist, the judge shall issue a warrant identifying the area, premises, building, or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
 - (B) Be directed to a person authorized by the county to execute it;
 - (C) Command the person to whom it is directed to inspect the area, premises, building, or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
 - (D) Identify the item or types of property to be seized, if any; and
 - (E) Direct that it be served during the daylight business hours between 8:00 a.m. and 5:00 p.m. and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and
- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court."

SECTION 3. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means employees directly engaged in the day-to-day operation of the hotel and employed by the operator.

“Hotel” means an operation [~~licensed under~~] as defined in section [445-92.] 445-90.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

“Owner” means the fee owner or lessee under a recorded lease of a hotel;

- (2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator’s operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

“Operator” means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

“Owner” means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means an employee directly engaged in the day-to-day operations of the orchard properties and employed by the operator.

“Operator” means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

“Orchard property” means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

“Owner” means a fee owner or lessee under a recorded lease of orchard property;

- (5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;
- (6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;
- (7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;
- (8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;
- (9) Amounts received by a management company from related entities engaged in the business of selling interstate or foreign common carrier telecommunications services in amounts equal to and which are disbursed by the management company for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

“Management company” means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

“Related entities” means:

- (A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

- (B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;
 - (C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and
 - (D) Any group or combination of the entities described in paragraph (C) constituting a unitary business for income tax purposes;
- whether or not the entity is located within or without the State or licensed under this chapter; and
- (10) Amounts received as grants under section 206M-15.”

SECTION 4. Section 445-94, Hawaii Revised Statutes, is amended to read as follows:

“§445-94 Certificates. (a) No ~~[license shall be issued for a]~~ person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the [applicant] person secures from the department of health [and presents to the treasurer] a certificate setting forth that an agent of the department has examined the building or buildings, with a description sufficient to identify and locate the same, and that the same are in good sanitary condition.

(b) No ~~[initial license shall be issued for a]~~ person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the [applicant] person secures a clearance from the appropriate county agency responsible for ensuring compliance with county building and zoning codes [and presents to the treasurer a certificate] setting forth that an agent of the agency has examined the building or buildings, proposed to be used for such purposes, with a description sufficient to identify and locate the same; and that the same are in compliance with the building and zoning codes.”

SECTION 5. Section 445-95, Hawaii Revised Statutes, is amended to read as follows:

“§445-95 Conditions ~~[of license.]~~ for conditional operation. ~~[A] The owner or operator of a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse[; license shall be issued upon the following express conditions, which shall be incorporated in the license:] shall:~~

- (1) ~~[The licensee shall not]~~ Not permit noisy or disorderly conduct in the building or buildings;
- (2) ~~[No]~~ Not allow any person engaging in acts of prostitution [shall be allowed] to reside therein or resort thereto;
- (3) ~~[No]~~ Not allow intoxicating liquor or other intoxicating substance [shall] to be furnished or sold therein, except as authorized by law;
- (4) ~~[The]~~ Keep the building or buildings and premises [licensed shall be kept] in good sanitary condition, in accordance with law and with the orders of the agent of the department of health;
- (5) ~~[The]~~ At all times allow the police[; agents of the licensing department;] and agents of the state department of health and agents of the appropriate county agencies responsible for compliance with the county’s building and zoning codes [shall at all times have] access for

purposes of inspection to enforce or administer this chapter and other applicable laws or rules;

- (6) ~~[No]~~ Not allow any gaming ~~[shall be allowed];~~
- (7) ~~[The licensee, if]~~ If a lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse ~~[shall]~~, keep records identifying its tenants, lodgers, or boarders; and
- (8) ~~[No facility shall]~~ Not deliver or purport to deliver health care services or treatment unless it is licensed, certified, or contracted for by the State or other governmental agencies to do so.”

SECTION 6. Section 445-96, Hawaii Revised Statutes, is amended to read as follows:

“§445-96 Penalty. (a) ~~[Any person who keeps a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, without a license shall be fined in accordance with section 445-12.~~

(b) Any person ~~[holding a license under this chapter]~~ who violates or fails to observe any of the requirements or conditions of this chapter ~~[or of the license,]~~ shall be fined not less than \$100 nor more than \$1,000 per day of violation for each violation ~~[and the court may cancel the license].~~

~~[(e)]~~ (b) Any person who intentionally or knowingly obstructs or interferes with the progress of any authorized inspection pursuant to this chapter shall be guilty of a misdemeanor.”

SECTION 7. Section 445-92, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 36

S.B. NO. 264

A Bill for an Act Relating to Certification for Tax Exemption.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-1, Hawaii Revised Statutes, is amended by amending the definition of “deaf” to read as follows:

“‘Deaf’ means a person whose average loss in the speech frequencies (500-2000 Hertz) in the better ear is eighty-two decibels, A.S.A., or worse. The impairment of deafness shall be certified to by a qualified otolaryngologist or a licensed audiologist under chapter 468E on forms prescribed by the department of taxation.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2001.

(Approved April 26, 2001.)

ACT 37

S.B. NO. 499

A Bill for an Act Relating to Leave Sharing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 79-33, Hawaii Revised Statutes, is amended to read as follows:

“§79-33 Leave sharing program. (a) The legislature, the chief executive of the State, or of a county may establish a program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The director of human resources development or of personnel services of a jurisdiction desiring to establish a leave sharing program shall adopt rules pursuant to chapter 91 governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer’s operations. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits; provided[~~-, however,~~] that sick leave need not be exhausted when the illness or injury involves a family member;
- (3) A personal illness or injury certified by a competent medical examiner as being serious and the cause of the recipient’s inability to work; provided that[~~;~~] the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted or, a family member whose illness or injury is certified by a competent medical examiner as being serious;
- (4) No disciplinary record of sick leave abuse within the past two years.

Notwithstanding the requirements of chapter 91, the legislature may establish a leave sharing program for legislative employees, in accordance with this section, under policies adopted separately by each house of the legislature and each legislative service agency, or jointly by any combination of entities thereof.”

SECTION 2. Act 253, Session Laws of Hawaii 2000, section 74, is amended by amending the new section entitled **“§78- Leave sharing program.”**, Hawaii Revised Statutes, to read as follows:

“§78- Leave sharing program. (a) The legislature, with regard to its employees, or the chief executive of a jurisdiction may establish a leave sharing program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The legislature, with regard to its employees, or the director of a jurisdiction desiring to establish a leave sharing program shall develop rules governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. If it is administratively infeasible to allow leave sharing between different departments or different bargaining units, the rules may limit leave sharing to employees within the same department or same bargaining unit, as necessary. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits; provided that sick leave need not be exhausted when the illness or injury involves a family member;
- (3) A personal illness or injury or a family member's illness or injury certified by a competent medical examiner as being serious and the cause of the recipient's inability to work; provided that the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted; and
- (4) No disciplinary record of sick leave abuse within the past two years.

Notwithstanding the requirements of chapter 91, the legislature may establish a leave sharing program for legislative employees, in accordance with this section, under policies adopted separately by each house of the legislature and each legislative service agency, or jointly by any combination of entities thereof."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2002.

(Approved April 26, 2001.)

ACT 38

S.B. NO. 1017

A Bill for an Act Relating to Residential Leaseholds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to place direct responsibility of payment of lessor's costs upon the lessees when an abandonment of eminent domain proceedings by the housing and community development corporation of Hawaii is due to a lessee's inability, failure, or refusal to comply with the provisions under chapter 516, Hawaii Revised Statutes, or to purchase the leased fee interest condemned.

SECTION 2. Section 516-23, Hawaii Revised Statutes, is amended to read as follows:

"§516-23 Exercise of power of eminent domain. Within twelve months after the designation of all or part of the development tract for acquisition, the housing and community development corporation of Hawaii shall acquire through voluntary action of the parties, or institute eminent domain proceedings to acquire the leased fee interest in the tract or portion so designated; provided that negotiations for acquisition by voluntary transaction shall not be required before the institution of

eminent domain proceedings. Except as otherwise provided in this part, the corporation shall exercise its power of eminent domain in the same manner as provided in chapter 101. If the development tract or applicable portion thereof, as the case may be, is not acquired or eminent domain proceedings are not instituted within the twelve-month period, the corporation shall reimburse the fee owner, the lessor, and the legal and equitable owners of the land so designated for actual out-of-pocket expenses of appraisal, survey, and attorney fees as the owner, the lessor, and the legal and equitable owners may have incurred as a result of the designation[.]; provided that, if the development tract or an applicable portion thereof is not acquired or eminent domain proceedings are not instituted within the twelve-month period as a result of the lessee's dismissal, discontinuance, or withdrawal from the eminent domain proceedings or failure to purchase the leased fee interest condemned because of the lessee's inability, failure, or refusal to comply with any provision under chapter 516 or to purchase the leased fee interest condemned, then such lessee and not the corporation shall be solely responsible to reimburse the fee owner, the lessor, and the legal and equitable owners of the land so designated or condemned, for their respective prorated costs, as described above, which the fee owner, the lessor, and the legal and equitable owners may have incurred as a result of the designation and condemnation."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 39

S.B. NO. 1047

A Bill for an Act Relating to the Short-Term Investment of State Moneys.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director of finance may invest any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director's judgment the action will not impede or hamper the necessary financial operations of the State in:

- (1) Any bonds or interest-bearing notes or obligations:
 - (A) Of the State (including state director of finance's warrant notes issued pursuant to chapter 40);
 - (B) Of the United States;
 - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
- (2) Federal Farm Credit System notes and bonds;
- (3) Federal Agricultural Mortgage Corporation notes and bonds;
- (4) Federal Home Loan Bank notes and bonds;
- (5) Federal Home Loan Mortgage Corporation bonds;
- (6) Federal National Mortgage Association notes and bonds;
- (7) Student Loan Marketing Association notes and bonds;
- (8) Tennessee Valley Authority notes and bonds;

- (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof[;] or repurchase agreements fully collateralized by any such bonds or securities;
- [(10) Repurchase agreements fully collateralized by any such bonds or securities;]
- (10) Securities of a money market mutual fund that is rated AAA, or its equivalent, by a nationally recognized rating agency or whose portfolio consists of securities that are rated as first tier securities by a nationally recognized statistical rating organization as provided in 17 C.F.R. §270.2a-7;
- (11) Federally insured savings accounts;
- (12) Time certificates of deposit;
- (13) Certificates of deposit open account;
- (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
- (15) Student loan resource securities including:
 - (A) Student loan auction rate securities;
 - (B) Student loan asset-backed notes;
 - (C) Student loan program revenue notes and bonds; and
 - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues; issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
- (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
- (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that the investments are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 40

S.B. NO. 1049

A Bill for an Act Relating to the Repeal of Outstanding Authorized but Unissued Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are currently sixteen Acts, representing \$161,730,000 in authorized but unissued special purpose revenue bonds, which do not provide for a lapsing date and for which there has been no action taken in at least eight, and in some cases, over seventeen years. The purpose of this Act is to repeal Act 109, Session Laws of Hawaii 1983, Act 300, Session Laws of Hawaii 1983, Act 145, Session Laws of Hawaii 1984, as amended by Act 3, Session Laws of Hawaii 1987, Act 96, Session Laws of Hawaii 1985, Act 147, Session Laws of Hawaii 1986, Act 190, Session Laws of Hawaii 1986, Act 227, Session Laws of Hawaii 1986, Act 263, Session Laws of Hawaii 1987, Act 304, Session Laws of Hawaii 1987, Act 142, Session Laws of Hawaii 1988, Act 224, Session Laws of Hawaii 1988, Act 273, Session Laws of Hawaii 1988, Act 297, Session Laws of Hawaii 1988, Act 299, Session Laws of Hawaii 1988, and Act 239, Session Laws of Hawaii 1991.

SECTION 2. Act 109, Session Laws of Hawaii 1983, is repealed.

SECTION 3. Act 300, Session Laws of Hawaii 1983, as amended by Act 141, Session Laws of Hawaii 1984, is repealed.

SECTION 4. Act 145, Session Laws of Hawaii 1984, as amended by Act 3, Session Laws of Hawaii 1987, is repealed.

SECTION 5. Act 96, Session Laws of Hawaii 1985, is repealed.

SECTION 6. Act 147, Session Laws of Hawaii 1986, is repealed.

SECTION 7. Act 190, Session Laws of Hawaii 1986, is repealed.

SECTION 8. Act 227, Session Laws of Hawaii 1986, is repealed.

SECTION 9. Act 263, Session Laws of Hawaii 1987, is repealed.

SECTION 10. Act 304, Session Laws of Hawaii 1987, is repealed.

SECTION 11. Act 142, Session Laws of Hawaii 1988, as amended by Act 282, Session Laws of Hawaii 1989, is repealed.

SECTION 12. Act 224, Session Laws of Hawaii 1988, is repealed.

SECTION 13. Act 273, Session Laws of Hawaii 1988, is repealed.

SECTION 14. Act 297, Session Laws of Hawaii 1988, is repealed.

SECTION 15. Act 299, Session Laws of Hawaii 1988, is repealed.

SECTION 16. Act 239, Session Laws of Hawaii 1991, is repealed.

SECTION 17. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 41

S.B. NO. 1108

A Bill for an Act Relating to Funeral Assistance Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Pursuant to section 27-1, Hawaii Revised Statutes, the burial or disposal of unclaimed corpses is identified as a state function. The department of human services, as provided by section 346-15, Hawaii Revised Statutes, has authority to pay for burial services, including cremation.

The purpose of this Act is to allow the respective county medical examiner or coroner to submit an application for funeral payments under the department's funeral payment program on behalf of an unclaimed corpse after sixty days from the date of death of the deceased.

SECTION 2. Section 346-15, Hawaii Revised Statutes, is amended as follows:

1. By amending the title and subsection (a) to read:

“§346-15 Burial of deceased [public] medical or financial assistance recipients or unclaimed corpses. (a) The department of human services may bear the cost of the burial of deceased [public] medical or financial assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.”

2. By amending subsection (e) to read:

“(e) The person [making] submitting an application for funeral payments under the department's funeral payment program, on behalf of a deceased medical or financial assistance recipient [or for an unclaimed corpse], shall have sixty days from the date of death of the deceased to submit the application for funeral payments to the department. This subsection shall not apply to applications submitted by the respective county medical examiner or coroner on behalf of unclaimed corpses.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 42

S.B. NO. 1138

A Bill for an Act Relating to the Statewide Newborn Hearing Screening Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding to part XXIX a new section to be appropriately designated and to read as follows:

“§321- Screening for hearing impairment. (a) All newborn infants shall be screened for hearing impairment for early identification of children with hearing loss and for the promotion of their development of language and communication.

(b) The person in charge of each birthing facility caring for newborn infants and the responsible physician attending the birth of a newborn or the person assisting the birth of a child not attended by a physician shall ensure that every infant in the person’s care be screened for hearing impairment. This section shall not apply if the parent, guardian, or other person having custody or control of the child objects to the screening in writing on the grounds that the screening conflicts with their religious beliefs. The written objection shall be made a part of the infant’s medical record.

(c) Birthing facilities screening newborn infants for hearing impairment shall report screening results to the department, for the purpose of the department ensuring a statewide system for the screening, diagnostic evaluation, and intervention for all newborn infants with hearing impairment.”

SECTION 2. Sections 321-362 and 321-363, Hawaii Revised Statutes, are amended to read as follows:

“[[§321-362[]] Duties. It shall be the duty and responsibility of the department to:

- (1) ~~[Develop a methodology to establish]~~ Establish, implement, and evaluate a statewide program for early identification of, and intervention for, hearing impairment in infants;
- (2) ~~[Develop]~~ Establish standards and guidelines for the screening, identification, diagnosis, intervention, and monitoring of infants with hearing impairment and infants at risk for delayed onset of hearing impairment;
- (3) Develop a plan in conjunction with the department of education’s statewide center for students with hearing or visual impairments to involve the parents or guardians with the medical and educational follow-up and management of infants who have been identified as hearing-impaired or at risk of delayed onset of hearing impairments; and
- (4) ~~[Develop a plan for the collection of data and evaluation of the program]~~ Collect and analyze program data in relation to the duties and responsibilities of the department.

[[§321-363[]] Rules. The department shall adopt rules, pursuant to chapter 91, necessary for the purposes of this part~~[-]~~, including but not limited to administration and quality of newborn hearing screening; retention of records and related data; reporting of positive screening results; diagnostic evaluation and intervention for infants with hearing impairment; informing parents about the purpose of screening; and maintaining the confidentiality of affected families.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Reports.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103D-321, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Payment of Taxes by Electronic Funds Transfer.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-9.9, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) If a person who is required under subsection (a)[, or who elects under subsection (b),] to remit taxes by one of the means of electronic funds transfer approved by the department fails to remit the taxes using an approved method on or before the date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to neglect, there shall be added to the tax required to be so remitted a penalty of two per cent of the amount of the tax. The penalty under this subsection is in addition to any penalty set forth in section 231-39.

(d) No later than twenty days prior to the convening of each regular session, the department shall submit a report to the legislature containing:

- (1) The number of taxpayers who were assessed the two per cent penalty pursuant to [[subsection (c)]]; and
- (2) The amounts of each assessment; and
- (3) The total amount of assessments collected for the previous year.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 45

S.B. NO. 1195

A Bill for an Act Relating to Taxpayer Communication Confidentiality Privileges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Confidentiality privileges relating to taxpayer communications. Section 7525 (with respect to confidentiality privileges relating to taxpayer communications) of the Internal Revenue Code shall be operative for the purposes of this title. All references to Internal Revenue Code sections within section 7525 shall be operative for purposes of this section. The term “Internal Revenue Service” as used in section 7525(a)(2)(A) means the department; the term “federal court” as used in section 7525(a)(2)(B) means state court; and the term “United States” as used in section 7525(a)(2)(B) means State.”

SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to [7525;] 7518. (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b);
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State; and
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

(b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that[,] section 704(b)(2) shall not apply to allocations of low-income housing tax credits among partners under section 235-110.8.

(e) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that [§]section 704(b)(2)[§] shall not apply to allocations of the high technology business investment tax credit allowed by section 235-110.9.

(f) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years.

(g) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

(h) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

(i) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

(j) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(k) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

(l) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.

~~[(m) Section 7525 (with respect to confidentiality privileges relating to taxpayer communications) of the Internal Revenue Code shall be operative for the purposes of this chapter. All references to Internal Revenue Code sections within section 7525 of the Internal Revenue Code shall be operative for purposes of this section. The term "Internal Revenue Service" as used in section 7525(a)(2)(A) of the Internal Revenue Code means the department; the term "federal court" as used in section 7525(a)(2)(B) means state court; and the term "United States" as used in section 7525(a)(2)(B) means State.]~~

SECTION 3. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.²

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2000.

(Approved April 26, 2001.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 46

H.B. NO. 514

A Bill for an Act Relating to Deputy Attorneys General.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 28-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general shall appoint, and at the attorney general’s pleasure remove, a first deputy attorney general and [sueh] other deputies and law clerks as the exigencies of the public service may require, and shall be responsible for all of the acts of the first deputy attorney general, other deputies, and law clerks. They shall act under the direction of the attorney general and shall perform [sueh] duties as the attorney general may require[-] regardless of the source of funding for their compensation and notwithstanding any law to the contrary, except that the attorney general shall not require the performance of duties that would violate the terms of an applicable funding source or that would be in contravention of a federal requirement, restriction, or condition. The first deputy attorney general and other deputies, subject to [sueh] the attorney general’s directions, may perform or exercise any and all duties or powers by law required of or conferred upon the attorney general.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 47

H.B. NO. 523

A Bill for an Act Relating to the Unauthorized Practice of Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 605-14, Hawaii Revised Statutes, is amended to read as follows:

“**§605-14 Unauthorized practice of law prohibited.** It shall be unlawful for any person, firm, association, or corporation to engage in or attempt to engage in or to offer to engage in the practice of law, or to do or attempt to do or offer to do any act constituting the practice of law, except and to the extent that the person, firm, or association is licensed or authorized so to do by an appropriate court, agency, or office or by a statute of the State or of the United States[; provided that nothing herein shall be deemed to authorize the licensing of a corporation to practice law except as provided in chapter 416]. Nothing in sections 605-14 to 605-17 contained shall be construed to prohibit the preparation or use by any party to a transaction of any legal or business form or document used in the transaction.”

SECTION 2. Section 605-17, Hawaii Revised Statutes, is amended to read as follows:

ACT 48

“§605-17 Penalties. Any person violating sections 605-14 to 605-16 shall be guilty of a [violation, but, upon any subsequent violation of the sections, the person shall be guilty of a] misdemeanor.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

1. No underscored material.

ACT 48

H.B. NO. 527

A Bill for an Act Relating to Interstate Family Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 576B-101, Hawaii Revised Statutes, is amended by amending the definition of “registering tribunal” to read as follows:

““Registering tribunal” means a tribunal of the state in which a support order is registered. The child support enforcement agency of this State shall be deemed the registering tribunal for the receipt and processing of all registration requested by another child support enforcement agency or an individual who has applied for child support enforcement agency services, and the child support enforcement agency of this State shall register the request in the appropriate tribunal. The family court shall be the registering tribunal for all other requests for registration.”

SECTION 2. Section 576B-606, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

“(d) For the purposes of this section, service of the notice [~~shall be by personal service or certified mail, return receipt requested. After initial service is effected, additional service upon a party,~~] of a hearing regarding the validity or enforcement of the registered order, shall be satisfied by regular mail to the party’s last known address. In any child support enforcement proceedings subsequent to an order, upon a showing that diligent effort has been made to ascertain the location of a party, notice of service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 49

H.B. NO. 598

A Bill for an Act Relating to Consumer Protections for Depository Institution Sales of Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 412:5-205.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Pursuant to section 412:5-205.5, a bank may engage in insurance sales through an independent insurance agent or agency under contract. In addition, a bank may engage in insurance sales pursuant to section 412:5-205.5, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, ~~[if the following requirements are met:~~

- ~~(1) The bank is prohibited from offering insurance products at teller stations;~~
- ~~(2) An agent of the bank or of its subsidiary or affiliate engaged in selling insurance in this State pursuant to section 412:5-205.5 shall be licensed in accordance with article 9, chapter 431;~~
- ~~(3) The bank or its insurance affiliate or subsidiary shall be] subject to [article 13,] chapter 431[, relating to unfair practices;~~
- ~~(4) The bank or its insurance affiliate or subsidiary shall prominently disclose in writing to customers solicited to purchase non-credit insurance that the insurance offered or sold:~~
 - ~~(A) Is not a deposit;~~
 - ~~(B) Is not insured by the Federal Deposit Insurance Corporation; and~~
 - ~~(C) Is not guaranteed by the bank or an affiliated depository institution.~~
- ~~(5) The bank or its insurance affiliate or subsidiary shall disclose in writing to customers solicited to purchase annuities that annuities offered or sold when appropriate, involve investment risk, including potential loss of principal].”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 50

H.B. NO. 634

A Bill for an Act Relating to Medical Assistance Recovery.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to expand the scope of the notice requirements of section 346-37, Hawaii Revised Statutes, to require that all parties make reasonable inquiry as to whether a claimant has received or is receiving medical assistance and give timely written notice of any claim or action to the department of human services.

SECTION 2. Section 346-37, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) An attorney representing a claimant or third person shall make reasonable inquiry as to whether the claimant has received or is receiving from the department medical assistance related to the incident involved in the action. If the claimant, claimant’s attorney, or claimant’s heirs, representatives, or beneficiaries, or any third person have received from the department actual notice of its right to reimbursement or if they have reason to know that the claimant has received or is receiving from the department medical assistance related to the incident, then the claimant, claimant’s attorney, [or] claimant’s heirs, representatives, or beneficiaries, or third person or third person’s attorney shall give to the department timely written notice of any claim or action against a third person. At any time during the pendency of any claim or action, the claimant, claimant’s attorney if represented, [or] claimant’s heirs, representatives, or beneficiaries, or third person or third person’s attorney may contact the department to ascertain the full amount of the costs of medical assistance or burial payment made, which information shall be provided in a reasonable time by the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant’s attorney¹ or third person or third person’s attorney, if the attorney has received actual notice from the department of a lien or if the attorney or third person has reason to know that a lien exists; or
- (2) The claimant or the claimant’s heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,

shall notify the department immediately in order to ascertain and pay the full amount of the costs of medical assistance or burial payment made.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

1. Prior to amendment “,” appeared here.

ACT 51

H.B. NO. 637

A Bill for an Act Relating to Ohana Conferencing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 587-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Ohana conference” means a family-focused, strength-based meeting facilitated by trained community facilitators designed to build and strengthen the network of protection of the extended family and the community for the child. Ohana conferences include extended family members and other important people in the child’s life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.”

SECTION 2. Section 587-26, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) The service plan should also include, but not necessarily be limited to:
- (1) The consideration given to the use of ohana conferences for family decision making;
 - [(1)] (2) The specific, measurable, behavioral changes that must be achieved by the parties; the specific services or treatment that the parties will be provided and the specific actions the parties must take or specific responsibilities that the parties must assume; the time frames during which the services will be provided and such actions must be completed and responsibilities must be assumed; provided that, services and assistance should be presented in a manner that does not confuse or overwhelm the parties;
 - [(2)] (3) The specific consequences that may be reasonably anticipated to result from the parties’ success or failure in making the family home a safe family home, including, but not limited to, the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination by award of permanent custody; and
 - [(3)] (4) Such other terms and conditions as the appropriate authorized agency deems to be necessary to the success of the service plan.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

ACT 52

H.B. NO. 697

A Bill for an Act Relating to the Hawaii Telecommunications and Information Industries Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 206P, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 53

H.B. NO. 699

A Bill for an Act Relating to Substance Abuse Testing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329B-5, Hawaii Revised Statutes, is amended to read as follows:

“§329B-5 Substance abuse testing procedures and interpretation of test results. (a) Prior to the collection of any sample for substance abuse testing, the

individual to be tested shall receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result. [The individual, prior to the collection of any sample for substance abuse testing, shall receive a medication disclosure form, approved by the director, to permit the individual to disclose any over-the-counter medication or prescribed drug that the individual has taken within the previous thirty days.]

(b) In accordance with this section, the director shall adopt rules pertaining to:

- (1) The qualifications, responsibilities, and licensing of the medical review officer;
- [(2) The use of medication disclosure forms;
- (3)] (2) The method of transmittal of laboratory test results and any interpretations of test results to the third party and the tested individual; and
- [(4)] (3) The obtaining, disclosure, and confidentiality of substance abuse testing information.

(c) No laboratory, including a substance abuse on-site screening location, may test for any substance not included on the written statement containing the specific substances to be tested for.

(d) As used in this section, "test results" means laboratory test results or the results of substance abuse on-site screening tests."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 54

H.B. NO. 1016

A Bill for an Act Relating to the Members of the Board of Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Unlike appointed members of other state boards, board of education members currently serve without any statutorily conferred immunity from or indemnification for civil liability arising as a result of their official conduct. While board of education members may be compensated at the rate of \$100 a day for attending meetings, they receive no official salary and basically serve, in effect, as volunteers. Board members receive no compensation for preparing for meetings, visiting schools and libraries, attending public hearings, meeting with community groups, parents, teachers and students, or speaking at graduation and dedication ceremonies - all acts essential to fulfilling their official responsibilities. Fairness dictates that they should at least receive the same statutory protection from civil liability as individuals appointed to a state board or commission.

The purpose of this Act is to provide board of education members the same statutorily conferred immunity from and indemnification for civil liability that members of appointed boards and commissions receive pursuant to section 26-35.5, Hawaii Revised Statutes.

SECTION 2. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section, “member” means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the local school board of any new charter school established under section 302A-1182, council, authority, committee, or commission, established by law or elected to the board of education or the board of trustees of the employees’ retirement system under section 88-24; provided that “member” shall not include any person elected to serve on a board or commission in accordance with chapter 11[-] other than a person elected to serve on the board of education.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 55

H.B. NO. 1159

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-2.5, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) No panel member shall be eligible for appointment as chief election officer so long as the person is a member of the elections appointment and review panel and for a period of one year thereafter.”

SECTION 2. Section 11-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk’s office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:
 - [(4)] (A) July thirtieth of the year of the primary election;
 - [(2)] (B) Ten calendar days prior to each primary and initial special election; and
 - [(3)] (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports:
 - [(4)] (A) The aggregate sum of all contributions and other campaign receipts received;
 - [(2)] (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more

- than \$100 during an election period, which has not previously been reported;
- [(3)] (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported;
 - [(4)] (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
 - [(5)] (E) A current statement of the balance on hand or deficit.”

SECTION 3. Section 13D-1, Hawaii Revised Statutes, is amended to read as follows:

“[H§13D-1[}] **Board of trustees; number; composition.** The board of trustees shall be composed of nine members elected at-large by qualified voters in the State [who are Hawaiian]. Of the nine members to be elected one shall reside on the island of Hawaii; one shall reside on the island of Maui; and one shall reside on the island of Molokai; one shall reside on the island of Kauai; and one shall reside on the island of Oahu.”

SECTION 4. Section 89-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a Hawaii labor relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until the member’s successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

The members shall devote full time to their duties as members of the board. Effective January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and the salary of each of the other members shall be ninety-five per cent of the chairperson’s salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member’s term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member’s term of service, shall have the same powers and duties as the regular member.

The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section [103D-209(b)] 28-8.3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and employees other than clerical and stenographic employees shall be exempt from chapters 76, 77, and 89. Clerical and stenographic employees shall be appointed in accordance with chapters 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the legislative bodies.”

SECTION 5. Act 253, Session Laws of Hawaii 2000, section 95, is amended by amending subsection (f) of section 89-5, Hawaii Revised Statutes, to read as follows:

“(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section [103D-209(b)] 28-8.3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.”

SECTION 6. Section 132-3, Hawaii Revised Statutes, is amended to read as follows:

“§132-3 Adoption of state [model] fire code. The state fire council shall, after public hearings pursuant to chapter 91, adopt prior to July 1, 1979, a state [model] fire code setting forth minimum requirements relative to the protection of persons and property from fire loss including without limitation: (1) the storage, handling and use of hazardous substances, materials and devices; and (2) the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The state [model] fire code, insofar as is practicable, shall complement, augment and be consistent in form and language with the building and other codes of the respective counties. Upon adoption by the state fire council, the state [model] fire code shall be transmitted to the respective county councils which may, by ordinance, either enact its provisions or enact more stringent provisions relating to protection of persons and property against fire loss; provided that the county councils may enact less stringent provisions with the prior written approval of the state fire council. The state fire council shall meet annually to review and amend the state [model] fire code.”

SECTION 7. Section 206M-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The development corporation in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents [H]for[H] special purpose revenue bonds issued to pay the cost of the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Other costs, commissions, and expenses incidental to the acquisition, construction, improvement, installation, equipping, or development of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.”

SECTION 8. Chapter 219, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “qualified aquaculturalist” in section 219-2, Hawaii Revised Statutes, to read:

““Qualified [~~aquaculturalist~~] aquaculturist” means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.”

2. By amending section 219-7, Hawaii Revised Statutes, to read:

“§219-7 Loans insured by the department.

- (1) The department of agriculture may insure up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified [~~aquaculturalist~~] aquaculturist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates;
- (2) Loans insured under this section shall be limited by the provisions of section 219-6;
- (3) Interest charged on an insured loan made under the provisions of this section shall be determined by the board;
- (4) When the application for an insured loan has been approved by the department, the department shall issue to the lender a guaranty for that percentage of the loan on which it insures payment of principal and interest. The lender shall collect all payments from the borrower and otherwise service the loan;
- (5) In return for the department’s guaranty, the lender shall remit a one-time insurance fee of two per cent on the principal amount of the insured portion of the loan, at the time the loan is booked, except that:

- (A) On loans of \$75,000 or less with a maturity exceeding twelve months, a reduced fee of one per cent; and
- (B) On all guaranteed loans with a maturity of twelve months or less, a reduced fee of one per cent;

shall be paid.

This fee may be paid by the borrower as a cost for the loan;

- (6) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the department shall issue, on request of the lender, a check for the percentage of the overdue payment guaranteed, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The department shall be reimbursed for any amounts so paid plus the applicable interest rate, where payment is collected from the borrower;
- (7) Under conditions specified in rules of the department, the lender may request that a portion or all of the guaranteed percentage of the principal balance of the loan be converted to a participating share held by the department subject to this section [219-7];
- (8) Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the department. Within thirty days of the notification, the department may request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim; and
- (9) The lender may reduce the percentage of the principal balance insured under this section at any time.”

3. By amending section 219-8, Hawaii Revised Statutes, to read:

“§219-8 Participation in loans by the department.

- (1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified [~~aquaculturalist~~] aquaculturist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the United States Department of Agriculture;
- (2) Participation loans under this section shall be limited by the provisions of section 219-6 and the department of agriculture’s share shall not exceed the maximum amounts specified therefor;
- (3) Interest charged on the private lender’s share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all state or national banks authorized to accept or hold deposits in the State on secured short term loans made to borrowers who have the highest credit rating with those banks;
- (4) The private lender’s share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under section 219-7;
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan;
- (6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan; provided that this fee

shall not be added to any amount which the borrower is obligated to pay;

- (7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting; and
- (8) Security for participation loans shall be limited by section [H]219-5(a)(6)[H]. All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender.”

SECTION 9. Section 220-1, Hawaii Revised Statutes, is amended to read as follows:

“§220-1 Aquaculture farms; rules. (a) The board of land and natural resources shall adopt rules for review of applications, and issuance of permits for aquaculture farms, pursuant to chapter 183C. The rules shall specify permitted uses; provided that all uses endorsed by the board of agriculture pursuant to chapter 219 shall be permitted uses; uses for which an environmental impact statement shall be necessary, pursuant to chapter 343, as well as those actions of repair and maintenance which shall not be subject to the permit and environmental impact statement provisions, including but not limited to emergency repairs.

(b) For the purposes of this section, “aquaculture” means all activities as defined in section 219-2, when carried out by a qualified [aquaculturalist] aquaculturist as defined by section 219-2.”

SECTION 10. Section 261-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any other law to the contrary notwithstanding, no tour aircraft operation shall be permitted in any airport under the State’s control without having a permit. The director shall adopt rules to regulate tour aircraft operations by permit which shall include but not be limited to:

- (1) Identification of the types of aircraft to be utilized;
- (2) The number of operations daily for each type of aircraft used and the days and hours of operation;
- (3) Verification that the applicant is in compliance with all state statutes, including but not limited to [~~section 261-12;~~] this section;
- (4) Verification that the applicant has the Federal Aviation Administration certificate 121 or 135;
- (5) A written assessment by the department of the impact to the surrounding area and to the subject state airport;
- (6) Revocation of a permit based on the failure to comply with the information provided by the applicant and the terms and conditions set forth by the department in the permit; and any false statement or misrepresentation made by the applicant;
- (7) Establishment of penalties for revocation and suspension of a permit for failure to comply with permit conditions;
- (8) Annual renewal of permits; and
- (9) Any change of operations under the existing permit to be approved by the director.

No permit shall be authorized unless accompanied by[:

- (4) A] a Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours[;] and

- [(2) Noise] noise abatement procedures to be employed in the vicinity of identified noise sensitive areas.

For the purposes of this subsection, “tour aircraft operations” means any business operation which offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other manmade or natural sites within an island of the State, and for the purpose of transporting passengers for tourist-related activities.”

SECTION 11. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Class 5. Dispensers’ licenses.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

[(+) (A)] (A) A standard bar;

[(2) (B)] (B) A premise in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;

[(3) (C)] (C) A premise in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or

[(4) (D)] (D) A premise in which employees or entertainers are compensated to sit with patrons whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

(2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee’s establishment.

(3)¹ For each category of class 5 licenses there shall be the following kinds:

[(+) (A)] (A) General (includes all liquors except alcohol);

[(2) (B)] (B) Beer and wine; and

[(3) (C)] (C) Beer.”

SECTION 12. Section 286-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any private contractor that has entered into a contract with the department to implement the traffic enforcement demonstration project pursuant to section 5 et seq. of Act 234, Session Laws of Hawaii 1998, as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000, may obtain from any county finance director the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of [that] Act 234, Session Laws of Hawaii 1998, as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000, and may not otherwise be publicly disclosed.”

SECTION 13. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

- (1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
- (2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports;
- (3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles; or
- (4) Any request from a private contractor that has entered into a contract with the department to implement the traffic enforcement demonstration project pursuant to section 5 et seq. of Act 234, Session Laws of Hawaii 1998[;]², as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000; provided that names and addresses of registered motor vehicle owners shall be used only as is necessary to carry out the provisions of the contract and the purposes of [that] Act 234, Session Laws of Hawaii 1998, as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000, and may not otherwise be publicly disclosed.”

SECTION 14. Section 291C-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

- (1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;
- (2) Regulating traffic by means of police officers or official traffic-control devices;
- (3) Regulating or prohibiting processions or assemblages on the highways;
- (4) Designating particular highways or roadways for use by traffic moving in one direction;
- (5) Establishing speed limits for vehicles in public parks;
- (6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;
- (7) Restricting the use of highways;
- (8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;
- (9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (10) Altering or establishing speed limits;
- (11) Requiring written accident reports;
- (12) Designating no-passing zones;
- (13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;
- (14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (15) Establishing minimum speed limits;
- (16) Designating hazardous railroad grade crossing;
- (17) Designating and regulating traffic on play streets;
- (18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;
- (19) Restricting pedestrian crossing at unmarked crosswalks;

- (20) Regulating persons propelling push carts;
- (21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;
- (22) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;
- (23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;
- (24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;
- (25) Entering into an agreement with any private contractor to implement the traffic enforcement demonstration project pursuant to section 5 et seq. of Act 234, Session Laws of Hawaii 1998[;]², as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000; or
- (26) Adopting such other traffic regulations as are specifically authorized by this chapter.”

SECTION 15. Section 329-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The authorization for the medical use of marijuana in this section shall not apply to:

- (1) The medical use of marijuana that endangers the health or well-being of another person;
- (2) The medical use of marijuana:
 - (A) In a school bus, public bus, or any moving vehicle;
 - (B) In the workplace of one’s employment;
 - (C) On any school grounds;
 - (D) At any public park, public beach, public recreation center, recreation or youth center; or
 - (E) Other place open to the public; and
- (3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this [part].”

SECTION 16. Section 346-59.6, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“[§346-59.6 Medicaid overpayment recovery.]”

SECTION 17. Chapter 368, Hawaii Revised Statutes, is amended as follows:
1. By amending section 368-3, Hawaii Revised Statutes, to read:

“§368-3 Powers and functions of commission. The commission shall have the following powers and functions:

- (1) To receive, investigate, and conciliate complaints alleging any unlawful discriminatory practice under [~~chapters 489, 515,~~] part I of chapter 489, chapter 515, and part I of chapter 378, and complaints filed under this chapter, and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful;
- (2) To hold hearings and make inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of these hearings and inquiries, to administer oaths and affirmations, conduct depositions, compel the attendance of parties and witnesses and the production of documents by the issuance of subpoenas, examine parties and

witnesses under oath, require answers to interrogatories, and delegate these powers to any member of the commission or any person appointed by the commission for the performance of its functions;

- (3) To commence civil action in circuit court to seek appropriate relief, including the enforcement of any commission order, conciliation agreement, or predetermination settlement;
- (4) To issue the right to sue to a complainant;
- (5) To order appropriate legal and equitable relief or affirmative action when a violation is found;
- (6) To issue publications and results of investigations and research that, in its judgment, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations;
- (7) To submit annually to the governor and the legislature a written report of its activities and recommendations for administrative or statutory changes required to further the purposes of this chapter;
- (8) To appoint an executive director, deputy executive director, attorneys, and hearings examiners who shall be exempt from chapters 76 and 77, and investigators and other necessary support personnel who shall be subject to chapters 76 and 77. Section [103D-209(b)] 28-8.3 notwithstanding, an attorney employed by the commission as a full-time staff member may represent the commission in litigation, draft legal documents for the commission, provide other necessary legal services to the commission, and shall not be deemed to be a deputy attorney general; and
- (9) To adopt rules under chapter 91.”

2. By amending subsection (a) of section 368-11, Hawaii Revised Statutes, to read:

“(a) The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by [~~chapters 489, 515,~~] part I of chapter 489, chapter 515, part I of chapter 378, and this chapter. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the commission’s executive director a complaint in writing that shall state the name and address of the person or party alleged to have committed the unlawful discriminatory practice complained of, set forth the particulars thereof, and contain other information as may be required by the commission. The attorney general, or the commission upon its own initiative may, in like manner, make and file a complaint.”

3. By amending subsection (d) of section 368-11, Hawaii Revised Statutes, to read:

“(d) For the purposes of this chapter “unlawful discriminatory practice” means an unfair discriminatory practice or like terms, as may be used in [~~chapters 489, 515,~~] part I of chapter 489, chapter 515, or part I of chapter 378.”

4. By amending subsection (a) of section 368-13, Hawaii Revised Statutes, to read:

“(a) After the filing of a complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the commission’s executive director shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that [~~chapter 489, 515,~~] part I of chapter 489, chapter 515, part I of chapter 378, or this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.”

5. By amending subsection (a) of section 368-17, Hawaii Revised Statutes, to read:

“(a) The remedies ordered by the commission or the court under this chapter may include compensatory and punitive damages and legal and equitable relief, including, but not limited to:

- (1) Hiring, reinstatement, or upgrading of employees with or without back pay;
- (2) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, with the utilization of objective criteria in the admission of persons to those programs;
- (3) Admission of persons to a public accommodation or an educational institution;
- (4) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;
- (5) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent;
- (6) Reporting as to the manner of compliance;
- (7) Requiring the posting of notices in a conspicuous place that the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information that the commission determines necessary to explain those laws;
- (8) Payment to the complainant of damages for an injury or loss caused by a violation of [~~chapters 489, 515,~~] part I of chapter 489, chapter 515, part I of chapter 378, or this chapter, including a reasonable attorney’s fee;
- (9) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney’s fees and expert witness fees, when the commission determines that award to be appropriate; and
- (10) Other relief the commission or the court deems appropriate.”

SECTION 18. Section 414-313, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection [(h)](h)) or share exchange for approval by its shareholders.”

SECTION 19. Section 431:2-201.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The provisions of Title 42 United States Code section 300(gg), et seq., as they relate to group and individual health insurance shall apply to title 24, except:

- (1) Where state law provides greater health benefits or coverage than Title 42 United States Code section 300(gg), et seq., then the state law shall be applicable;
- (2) This section shall not be applicable or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4);
- (3) The following definitions shall be used when applying Title 42 United States Code section 300(gg), et seq.:
 - (A) “Employee” means an employee who works on a full-time basis with a normal workweek of twenty hours or more;

- (B) "Group health issuer" means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from Title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under sections 732(c) and 733(c) of Title I of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act; and
- (C) "Small employer" means an employer who employs between one and no more than fifty employees;
- (4) All group health issuers shall offer all small group health plans to all small employers whose employees live, work, or reside in the group health issuer's service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups; and
- (5) A group health issuer shall be prohibited from imposing any preexisting condition exclusion.

For the purpose of this subsection, "small group health plans" means the medical plans currently offered, advertised, or marketed by a group health issuer for small [§]employers[§]."

SECTION 20. Section 431:10C-308.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The charges and frequency of treatment for services specified in section 431:10C-103.5(a), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers' compensation supplemental medical fee schedule. Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, to be conducted by a licensed Hawaii provider unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the appropriate codes in the workers' compensation supplemental [§]medical[§] fee schedule. The workers' compensation supplemental medical fee schedule shall not apply to independent medical examinations conducted by out-of-state providers if the charges for the examination are reasonable. The independent medical examiner shall be selected by mutual agreement between [§]the[§] insurer and claimant; provided that if no agreement is reached, the selection may be submitted to the commissioner, arbitration or circuit court. The independent medical examiner shall be of the same specialty as the provider whose treatment is being reviewed, unless otherwise agreed by the insurer and claimant. All records and charges relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation supplemental medical fee schedule."

SECTION 21. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Where a stock or mutual insurer converts to a reciprocal insurer or merges with a reciprocal insurer in which the reciprocal insurer will be the surviving company, the stock or mutual insurer shall include in its articles of amendment the fact of the conversion to, or merger with, a reciprocal [§]insurer[§] and that the resulting or surviving entity shall be a reciprocal insurer under the continued

jurisdiction of the commissioner, the effective date of the conversion of merger, and the name of the agent for service of process of the converted or surviving reciprocal insurer.”

SECTION 22. Section 467E-7, Hawaii Revised Statutes, is amended to read as follows:

“§467E-7 Licensing requirements. In addition to the licensing requirements provided by section 436B-11, the director shall consider the following as minimum evidence that an applicant is qualified to be licensed:

- (1) The applicant holds a master’s degree from a college or university in a social work program accredited by or deemed to be equivalent to an accredited program by the Council on Social Work Education or a doctoral degree accredited by the Western Association of Schools and Colleges or a comparable regional accreditation body; and
- (2) The applicant has passed the national examination given by the [[Association of Social Work Boards]].”

SECTION 23. Section 489-7.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

- (1) The minimum \$1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and
- (2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this [chapter] part and deterrence from violation of its provisions.”

SECTION 24. Section 489-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person, firm, company, association, or corporation who violates this [chapter] part shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this [chapter] part shall be a separate violation.”

SECTION 25. Section 489E-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 490:1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 490:3-302(a), 490:7-501, or [490:9-308] 490:9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.”

SECTION 26. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

“§502-33 Identification of reference to registration of original. The registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. Except as otherwise provided, every judgment shall contain or have endorsed on it the social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code~~, section 490:9-408~~. This section does not apply to any document mentioned herein executed prior to April 13, 1915.”

SECTION 27. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (m) to read as follows:

“(m) The provisions of section 571-52~~[(d)]~~(d) and (e)~~[(e)]~~ shall apply to all orders for automatic assignments issued under this section.”

SECTION 28. Chapter 661, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) of section 661-21, Hawaii Revised Statutes, to read:

“(d) This section shall not apply to any controversy involving an amount of less than \$500 in value. For purposes of this subsection, “controversy” means the aggregate of any one or more false claims submitted by the same person in violation of this ~~[(part)]~~part. Proof of specific intent to defraud is not required.”

2. By amending section 661-23, Hawaii Revised Statutes, to read:

“~~[(§661-23)] Evidentiary determination; burden of proof.~~ A determination that a person has violated the provisions of this ~~[(part)]~~part shall be based on a preponderance of the evidence.”

3. By amending section 661-24, Hawaii Revised Statutes, to read:

“~~[(§661-24)] Statute of limitations.~~ An action for false claims to the State pursuant to this ~~[(part)]~~part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 661-21 is committed.”

4. By amending subsection (a) of section 661-25, Hawaii Revised Statutes, to read:

“(a) A person may bring a civil action for a violation of section 661-21 for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this ~~[(part)]~~part.”

SECTION 29. Section 706-648, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the probation services fee under subsection [(1)], payments by the defendant shall be made in the following order of priority:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) Fines.”

SECTION 30. Section 805-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Upon subsequent hearing ordered by the court or upon the driver’s or registered owner’s motion, the court may, in its discretion, terminate any judgment previously entered under subsection (c) upon finding that the registered owner and the driver, as applicable, have complied with chapter 287 with respect to any prior accident as evidenced by a form properly validated by a police department and:

- (1) Complied with all requirements under chapter 431:10C as evidenced by a motor vehicle insurance identification card and the insurance policy issued by a licensed insurer; or
- (2) Complied with all requirements under chapter 431:10C as evidenced by a certificate of self-insurance issued by the insurance commissioner pursuant to section [(431:10C-107(d))].”

SECTION 31. Section 431:10C-104.5, Hawaii Revised Statutes, is repealed.

SECTION 32. Act 165, Session Laws of Hawaii 2000, is amended by amending the prefatory language in section 3 to read as follows:

“SECTION 3. [Chapter] Section 5-16, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 33. Act 249, Session Laws of Hawaii 2000, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding [two new parts] a new part to be appropriately designated and to read as follows:”

SECTION 34. Act 250, Session Laws of Hawaii 2000, is amended by amending the prefatory language following section 2 to read as follows:

“SECTION 3. Section 432E-1, Hawaii Revised Statutes, is amended by adding [six] seven new definitions to be appropriately inserted and to read as follows:”

SECTION 35. Act 253, Session Laws of Hawaii 2000, section 77, is amended by amending subsection (c) of section 78-12, Hawaii Revised Statutes, to read as follows:

“(c) The officer, agent, employee or other person in the service of the jurisdiction alleged to be indebted to a jurisdiction may waive the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and

- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.”

SECTION 36. Act 253, Session Laws of Hawaii 2000, section 74, is amended by amending subsection (b) of section 78- , Hawaii Revised Statutes, entitled “Incentive and service awards”, to read as follows:

“(b) The programs may provide for cash awards to recognize suggestions, inventions, superior accomplishments, length of service, and other personal or group efforts. A cash award shall be in addition to the employee’s regular compensation [of the recipients]. The acceptance of a cash award shall constitute an agreement that use by the government of any idea, method, or device for which the award is made shall not form the basis of a further claim upon the government by the employees or the employees’ heirs and assigns.”

SECTION 37. Act 253, Session Laws of Hawaii 2000, section 104, is amended by amending subsection (d) of section 89A-1, Hawaii Revised Statutes, to read as follows:

“(d) No employee of the office of collective bargaining and managed competition shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position on the effective date of this Act shall not be exempted from civil service until the incumbent in that position on the effective date of this Act vacates that position.”

SECTION 38. Act 297, Session Laws of Hawaii 2000, is amended by amending section 35 to read as follows:

“SECTION 35. This Act shall take effect upon its approval; provided that:

- (1) Part I, upon its approval, shall apply to taxable years beginning after December 31, 1999; [and]
- (2) Part III shall take effect on July 1, 2000[-]; and
- (3) Amendments made to section 36-27 by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.”

SECTION 39. Statutory material to be repealed is bracketed and stricken.³ New statutory material is underscored.

SECTION 40. This Act shall take effect upon its approval; provided that:

- (1) Section 5 shall take effect on July 1, 2002;
- (2) Sections 25 and 26 shall take effect on July 1, 2001;
- (3) Sections 35 to 37 shall take effect on July 1, 2002;
- (4) Section 32 shall take effect retroactive to June 6, 2000;
- (5) Sections 33 and 34 shall take effect retroactive to June 19, 2000; and
- (6) Section 38 shall take effect retroactive to July 5, 2000.

(Approved April 26, 2001.)

Notes

1. “(3)” should be underscored.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 56

H.B. NO. 1411

A Bill for an Act Relating to Secondary Market Services Corp.—Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 309-1.5, Hawaii Revised Statutes, is amended to read as follows:

“§309-1.5 Authorization of corporation to acquire educational loan notes. The governor is authorized to request the organization of a private not-for-profit corporation to be affiliated with United Student Aid Funds, Inc., which corporation shall be established and operated exclusively for the purpose of acquiring student loan notes ~~[held by local financial institutions]~~ under the federal Higher Education Act of 1965, as amended. The governor is authorized to request that United Student Aid Funds organize a single private not-for-profit corporation known as the Secondary Market Services Corp.—Hawaii ~~[for the exclusive purpose of this section.]~~ to be established and operated exclusively for the purpose of acquiring student loan notes under the federal Higher Education Act of 1965, as amended. The corporation:

- (1) Shall be a not-for-profit corporation organized under the laws of the State and authorized to do business within the State and shall be the only not-for-profit corporation organized within the State requested to conduct a program of acquiring student loan notes;
- (2) Shall be required by its articles of incorporation and bylaws to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States; and
- (3) Is authorized to issue obligations pursuant to section 103 of the Internal Revenue Code of 1986, as amended. Those obligations shall be payable solely from the revenues and assets of the corporation pledged thereto and shall not constitute a general, limited, or moral obligation of the State, or any department, agency, or political subdivision thereof under any constitutional, statutory, or other provision. Neither the full faith and credit of the State nor that of any department, agency, or political subdivision thereof shall be pledged to the payment of the principal of, or interest on, those obligations and those obligations shall so state on their face. Bonds, notes, and other obligations of the corporation are declared to be issued for a public purpose and to be public instrumentalities and, together with the income therefrom, shall be exempt from all state, county, and municipal taxation, except inheritance, transfer, and estate taxes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

A Bill for an Act Relating to License Plates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide for a fee, one set of special number plates upon the receipt of an application together with:

- (1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States;
- (2) Certification that the applicant is a veteran;
- (3) Specific proof that the applicant was serving the United States in the military or as a civilian, on Oahu, or offshore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof;
- (4) Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States; or
- (5) Certification from the United States Department of Veterans Affairs or the state office of veterans’ services that the applicant is a combat veteran or a veteran of the Vietnam conflict [or], the Korean conflict [or], World War II[-], or the Persian Gulf conflict.

(b) The design of the plates for:

- (1) Purple heart recipients shall include the words “COMBAT WOUNDED”;
- (2) Veterans shall include the word “VETERAN”;
- (3) Pearl Harbor survivors shall include the words “PEARL HARBOR SURVIVOR”;
- (4) Former prisoners of war shall include the words “FORMER PRISONER OF WAR”;
- (5) Combat veterans shall include the words “COMBAT VETERAN”;
- (6) Veterans of the Vietnam conflict shall include the words “VIETNAM VETERAN”;
- (7) Veterans of the Korean conflict shall include the words “KOREA VETERAN”; [and]
- (8) Veterans of World War II shall include the words “WORLD WAR II VETERAN”[-]; and
- (9) Veterans of the Persian Gulf conflict shall include the words “PERSIAN GULF VETERAN”.

These designations shall be imprinted on the left side of the license plates in a manner similar to congressional and honorary consul license plates.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on October 1, 2001.

(Approved April 26, 2001.)

ACT 58

S.B. NO. 630

A Bill for an Act Relating to Intoxicating Liquors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§281- Reciprocal shipments of wine. Notwithstanding any other law to the contrary, the holder of a license to manufacture wine in another state that affords holders of a class 1 license to manufacture wine under section 281-31 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine under this section shall submit, to the appropriate liquor commission, a shipping invoice for each delivery into this State. Delivery of a shipment into this State under this section shall not be deemed to constitute a sale in this State.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 59

S.B. NO. 1010

A Bill for an Act Relating to Functional Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to transfer the responsibility for developing guidelines for the preparation and revision of functional plans from the department of budget and finance to the office of planning because the office of planning is the statewide planning agency.

SECTION 2. Section 226-56, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Functional plans shall be prepared and revised in accordance with guidelines developed by the [department of budget and finance.] office of planning.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

A Bill for an Act Relating to the Fee Simple Residential Revolving Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend sections 516-30, 516-33.5, and 516-44, Hawaii Revised Statutes, to require participating lessees to reimburse the fee simple residential revolving fund for direct costs only and to clarify that lessees' deposits collected under chapter 516, Hawaii Revised Statutes, are placed into individual interest bearing accounts and not into the fee simple residential revolving fund. Indirect costs incurred through the administration of the land reform program will be absorbed by the fund.

SECTION 2. Section 516-30, Hawaii Revised Statutes, is amended to read as follows:

“§516-30 Purchase of leased fee interest. The lessee of a residential lot within a development tract, whether the lessee was a lessee at the time of the acquisition or became a lessee after the acquisition of the development tract, who has applied to the corporation and has qualified for purchase of the leased fee interest shall purchase from the housing and community development corporation of Hawaii by contract within sixty days of acquisition of the interest by the corporation, the leased fee interest to the lot, subject to the terms, covenants, and conditions of the contract executed with the corporation; provided that the lessee is not then in default in the performance of the lessee's obligations under the lease; and further provided that should any of [said] the lessees fail or refuse to enter into such a contract, then in such event, each such lessee shall pay to the corporation the lessee's pro rata share of all direct costs incurred by the corporation in the acquisition of the houselots within the development tract including but not limited to appraisal costs, costs of publication, and survey, and the corporation is [hereby] authorized to take whatever action it deems necessary to collect such costs; and provided further that in case of a wilful breach of the purchase agreement the corporation shall be entitled to any available remedy, including the sale of its interest in the houselot; and further provided that the sales price shall be at the lowest possible price consistent with section 516-32 and the purpose of this chapter.”

SECTION 3. Section 516-33.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation may require the submission of a deposit by any lessee applying to the corporation for the purchase of a residential lot under this chapter. The amount of the deposit shall be established by rule. All interests earned on deposits submitted by lessees shall accrue to the lessees.”

SECTION 4. Section 516-44, Hawaii Revised Statutes, is amended to read as follows:

“§516-44 Fee simple residential revolving fund. A fee simple residential revolving fund is [hereby] created. The funds appropriated for the purposes of this chapter and chapter 519 and all moneys received or collected by the housing and community development corporation of Hawaii under this chapter and chapter 519 shall be deposited in the revolving fund. Moneys collected to reimburse the corporation from the lessees for their prorata share of the direct costs incurred by the corporation under this chapter shall be deposited into the revolving fund. The

proceeds in the funds shall first be used to pay the principal and interest on bonds or other indebtedness issued by the corporation, or by the State, and then for necessary expenses, including indirect costs of the corporation in administering chapters 516 and 519. ~~[All interest earned on moneys deposited by lessees into this revolving fund shall accrue to the lessees.]~~

Moneys in the fund shall be used to pay all costs of chapters 516 and 519 including administration.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 61

S.B. NO. 1039

A Bill for an Act Relating to the Employees’ Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-98, Hawaii Revised Statutes, is amended to read as follows:

“§88-98 Return to service of a retirant. Any retirant who returns to employment requiring active membership shall be reenrolled as an active member of the system in the same class from which the retirant originally retired and the retirant’s retirement allowance shall be suspended.

- (1) If the retirant returns to service before July 1, 1998, and again retires, the retirant’s retirement allowance shall consist of:
 - (A) For members with fewer than three years of credited service during the member’s period of reemployment, the allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; plus, for the period of service during the member’s reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member’s age, average final compensation, and other factors in accordance with the benefit formula in existence at the time of the member’s latest retirement; or
 - (B) For members with three or more years of credited service during the member’s period of reemployment, the allowance computed as if the member were retiring for the first time; provided that in no event shall the allowance be less than the amount determined in accordance with subparagraph (A); [and]
- (2) If the retirant returns to service after June 30, 1998, and again retires, the retirant’s retirement allowance shall be computed in accordance with paragraph (1)(A), regardless of the number of years of service in the reemployment period[.] and
- (3) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:
 - (A) Have the retirant’s retirement allowance suspended;

- (B) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and
- (C) Be subject to the age and service requirements under section 88-73 when the member again retires.

The board of trustees shall adopt such rules as may be required to administer the purposes of this section.”

SECTION 2. Section 88-273, Hawaii Revised Statutes, is amended to read as follows:

“§88-273 Break in service; reemployment. (a) Any class C member who terminates service prior to accumulating ten years of credited service, excluding unused sick leave, shall cease to be a member and shall forfeit all credited service; provided that:

- (1) If the former class C member becomes a member again within one calendar year from the date of termination, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one calendar year after the date of termination, one month of service credit for previous service shall be restored for each month of service rendered following the return to membership.
- (2) If the former class C member becomes a class A or class B member within one calendar year from the date of termination, all class C service credit for previous service shall be restored. If the former class C member becomes a class A or class B member more than one calendar year after the date of termination, one month of class C service credit for previous service shall be restored for each month of service rendered following the return to membership.

(b) Any class C member who terminates service with a vested right and who subsequently becomes a class A, class B, or class C member shall retain all service credit for previous service and shall be credited with additional service credit for service rendered following the return to membership.

(c) Any retirant who retired under the provisions of part VII of this chapter and returns to service requiring membership in the system as a class C member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; plus, for the period of service during the member’s reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member’s age, average final compensation, and other factors in accordance with the benefit formula of a class C member in existence at the time of the member’s final retirement.

(d) Any retirant who retired under part VII and returns to service requiring membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; plus, for the period of service during the member’s reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member’s age, average final compensation, and other factors in accordance with the benefit formula of a class A or class B member in existence at the time of the member’s final retirement.

(e) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any other related benefit provided by chapter 88; and
- (3) Be subject to the age and service requirements under section 88-281 when the member again retires."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 62

S.B. NO. 1073

A Bill for an Act Relating to Travel Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to increase protections for consumers against the risk of loss from prepaid travel agency and charter tour services. Travel agencies and charter tour operators that are forced to suspend business operations due to mismanagement pose a significant threat to Hawaii's consumers. The growing incidence of these situations in recent years suggests that existing statutory requirements for travel agencies and charter tour operators do not offer adequate protections to consumers against the risk of loss from prepaid travel agency or charter tour services. Additional registration and client trust account record keeping requirements would ensure that travel agencies and charter tour operators maintain sound business practices. Added remedies, penalties, and specific prohibited acts would further safeguard consumers against the risk of financial loss.

SECTION 2. Chapter 468L, Hawaii Revised Statutes, is amended by adding to part I six new sections to be appropriately designated and to read as follows:

"§468L-A Denial of registration. The director may deny the registration of any travel agency or charter tour operator when a travel agency or charter tour operator, its directors, officers, owners, members, managers, or general partners:

- (1) Fails to meet the requirements for registration as provided in this chapter;
- (2) Fails to satisfy a civil fine, penalty, or restitution order arising out of any administrative or enforcement action brought by any governmental agency for conduct involving fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (3) Has a pending criminal, administrative, or enforcement proceeding brought against it in any jurisdiction for conduct involving fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (4) Has had an order or judgment entered against it in the past ten years in any criminal, administrative, or enforcement action for conduct invol-

- ing fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (5) Fails to establish and maintain a client trust account in accordance with this chapter;
- (6) Makes any false statement, representation, or certification in any document or record required to be maintained under this chapter;
- (7) Fails to keep, maintain, and disclose upon request the books and records required to be maintained under this chapter; or
- (8) Violates this chapter or any rule or order of the director.

§468L-B Record keeping requirements for client trust accounts. (a) A travel agency or charter tour operator shall maintain all books and records necessary to comply with this chapter and its rules.

(b) A travel agency or charter tour operator shall keep and maintain for a period of at least two years copies of all bank statements, deposit slips, canceled checks, drafts, and wire or electronic transaction documents relating to client trust accounts. The travel agency, charter tour operator, or any branch offices shall make such records available for inspection and audit within three business days of a written request by the director. Nothing herein shall prevent the director from inspecting and auditing the books and records of the travel agency, charter tour operator, or any branch offices, as otherwise provided under this chapter or its rules.

§468L-C Prohibited acts. (a)¹ No travel agency or charter tour operator shall engage in any of the following:

- (1) Selling or advertising to sell travel or charter tour services without first registering or renewing a registration with the director under this chapter;
- (2) Conducting business as a registered travel agency or charter tour operator without establishing and maintaining a client trust account in accordance with sections 468L-5, 468L-B, and 468L-24 and the rules relating to travel agencies and charter tour operators;
- (3) Failing to provide evidence of the establishment of a client trust account or to notify the department of the name of the financial institution at which the client trust account is held or of any change in the account number or location within three business days of any change in accordance with section 468L-5 and the rules relating to travel agencies and charter tour operators;
- (4) Making any false statement, representation, or certification in any application, document, or record required to be submitted, filed, or retained under this chapter;
- (5) Misrepresenting the consumer's right to cancel and to receive an appropriate refund or reimbursement as provided under this chapter;
- (6) Failing to provide a written statement to the consumer containing specific information as required by section 468L-4;
- (7) Failing to provide or otherwise comply with the disclosure requirements of sections 468L-6 and 468L-7;
- (8) Failing to make available to the director such books and records as may be requested by the director pursuant to sections 468L-3(6), 468L-B, and 468L-28 and the rules relating to travel agencies and charter tour operators; or
- (9) Otherwise violating any of the provisions of this chapter or its rules.

§468L-D Revocation, suspension, and renewal of registration. In addition to any other action authorized by law, the director may revoke, suspend, or refuse to

renew the registration of any travel agency or charter tour operator that violates this chapter.

§468L-E Violations; summary suspension; penalties. (a) Any violations by a travel agency or charter tour operator of any law or rule relating to client trust accounts shall constitute a prima facie showing of fraud on the part of the travel agency or charter tour operator.

(b) Upon a violation by a travel agency or charter tour operator of any law or rule relating to client trust accounts, the director may suspend or restrict the registration of the travel agency or charter tour operator as provided under section 436B-23. The director, as part of a proceeding brought under section 436B-23, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.

(c) A travel agency or charter tour operator that violates any provision of this chapter may be fined not more than \$1,000 for each violation; provided that a charter tour operator also shall be assessed an administrative fine pursuant to section 468L-27 for any violation of that section.

§468L-F Court action for failure to maintain client trust accounts. (a) Whenever a travel agency or charter tour operator fails to establish or maintain a client trust account for the benefit of the consumers paying money to the travel agency pursuant to section 468L-5 or 486L-B² or the rules relating to travel agencies and charter tour operators, the director may file an action in circuit court to obtain an injunction or other appropriate order or judgment.

(b) The director shall not be required to post a bond in any action brought under this section.”

SECTION 3. In codifying the new sections added to chapter 468L, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new Hawaii Revised Statutes sections in this Act.

SECTION 4. New statutory material is underscored.³

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

Notes

1. No subsection (b).
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 63

S.B. NO. 1161

A Bill for an Act Relating to the Disposition of Abandoned or Seized Property on Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-31.5, Hawaii Revised Statutes, is amended to read as follows:

“§171-31.5 Disposition of abandoned or seized property. (a) The department may sell, donate, or otherwise dispose of property abandoned or seized on land owned by the State upon compliance with the requirements of this section.

(b) The department shall send notice by certified mail, at least thirty days prior to disposition of the abandoned or seized property, to the address of the owner of [said] the property abandoned or seized if the owner is known or can be determined. The notice shall apprise the owner of the identity and location of the property abandoned or seized and of the intent of the department to sell, donate, or otherwise dispose of the property. Where the identity or the address of the owner is unknown or cannot be determined, the notice shall be posted on the premises where the property was abandoned or seized.

(c) [The] If the abandoned or seized property has an estimated value of \$1,000 or more, the department shall also give public notice of the disposition at least once [in the county] either statewide or in a publication of local circulation where the property was abandoned or seized; provided that the disposition shall not take place less than five days after the notice of intent to dispose of the property.

(d) The sale of [property] abandoned or seized property having an estimated value of \$1,000 or more shall be by public auction through oral tenders in the county where the property was abandoned or seized. Where no bid is received, the property may be sold by negotiation, disposed of or sold as junk, kept by the department, or donated to any other government agency or a charitable organization.

(e) Any person entitled to the [property] abandoned or seized property may repossess the property prior to its disposition upon proof of entitlement and payment of all unpaid rent, debts, charges, and fines owing and all handling, storage, appraisal, advertising, and any other expenses incurred in connection with the proposed disposition of the [property] abandoned or seized[-] property.

(f) The requirement of public notice and public auction pursuant to subsections (c) and (d) shall not apply when the value of the property abandoned or seized is less than [\$100.] \$1,000. In that event, the property may be sold by negotiation, disposed of or sold as junk, kept by the department, or donated to any other government agency or a charitable organization.

(g) The proceeds of the sale [at public auction] of [property] abandoned or seized[-] property, after deduction of all charges and fines and all expenses of handling, storage, appraisal, advertising, and other sale expenses, shall be first offset against any amounts owed by the owner to the State. Any amount remaining shall be held in trust for the owner of the property for thirty days, after which time the proceeds shall be paid into the [general or appropriate special fund.] department's appropriate special fund or to the general fund if no special fund exists.

(h) The remedies available to the owner of abandoned or seized property are limited to those provided in subsections (e) and (g) of this section. The State, its officers, employees, and agents shall not be liable to the owner of [property] abandoned or seized property because of any disposition of the property made pursuant to this section.

(i) For purposes of this section, “department” includes the department of land and natural resources and any other state department or agency [which] that manages land owned or controlled by the State.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 64

S.B. NO. 1198

A Bill for an Act Relating to the Public Service Company Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to effectuate an agreement entered into, by, and among the State of Hawaii, the city and county of Honolulu, the county of Maui, the county of Kauai, the county of Hawaii, and a number of public service companies by providing for a sharing of the public service company tax revenues with those counties that establish by ordinance an exemption from real property tax for public service companies. Although no party to the agreement has made any admissions with respect to issues involved in the pending litigation, one of the purposes of this Act is to clarify the tax imposed by section 239-5(a), Hawaii Revised Statutes, as a lawful exercise of the State's taxing authority, in accordance with Article VIII, sections 3 and 6, of the Hawaii Constitution.

SECTION 2. Section 239-4, Hawaii Revised Statutes, is amended to read as follows:

“§239-4 Returns. Each public service company, on or before the twentieth day of the fourth month following the close of the taxable year, shall file with the office of the department of taxation for the district within which the principal office of the public service company is maintained a return in such form as the department may prescribe, showing its taxable gross income for the preceding taxable year. In case any public service company engages in lines of business other than its public service company business, the receipts therefrom shall not be subject to tax under this chapter, but the same tax liabilities shall attach to the public service company on account of the other lines of business as would exist if no public service company business were engaged in. In the case of a public utility subject to the rate of tax imposed by section 239-5(a) or (b), if the public utility engages in lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed, in accordance with the applicable county tax ordinance, the same as if no public utility business were done. In the case of a public utility remitting payments to a county of a portion of the revenues generated from the tax imposed by section 239-5(a), the public utility shall also file with the director of finance of the county to which such payment is paid, a statement showing all gross income from the public utility business upon which the tax is calculated and the allocation of that gross income among the counties.”

SECTION 3. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be levied and assessed upon each public utility, except airlines, motor carriers, common carriers by water, and contract carriers taxed by section 239-6, a tax of such rate per cent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is in lieu of all taxes other than those below set out, and is a means of taxing the ~~[real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the]~~ personal property of the public utility, tangible and intangible, including going concern value. In addition to the tax imposed by this chapter there also are imposed income taxes, the specific taxes imposed by chapter 249, the fees prescribed by chapter 269, any tax specifically imposed by the terms of the public

utility's franchise or under chapter 240, the use or consumption tax imposed by chapter 238, and employment taxes.

The rate of the tax upon the gross income of the public utility shall be four per cent; provided that if:

- (1) A county provides by ordinance for a real property tax exemption for real property used by a public utility in its public utility business and owned by the public utility (or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and
- (2) The county has not denied the exemption to the public utility, but excluding a denial based upon a dispute as to the ownership, lease, or use of a specific parcel of real property,

then there shall be levied and assessed a tax in excess of the four per cent rate determined in the manner hereinafter provided upon the gross income allocable to such county. The revenues generated from the tax in excess of the four per cent rate hereinbefore established shall be paid by the public utility directly to such county based upon the proportion of gross income from its public utility business attributable to such county, based upon the allocation made in the public utility's filings with the State of Hawaii; provided that if the gross income from the public utility business attributable to such county is not so allocated in the public utility's State filings, then the gross income from the public utility business shall be equitably allocated to each county. The relative number of access lines in each county shall be deemed an acceptable basis of equitable allocation for telecommunication companies.

The rate of the tax in excess of the four per cent rate hereinbefore established upon the gross income [of] from the public utility business shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen per cent or less, the rate of [the] tax in excess of the four per cent rate on gross income shall be [5-885] 1.885 per cent; for all companies having net income in excess of fifteen per cent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one per cent in the ratio of net income to gross, there shall be an increase of .2675 per cent in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term "R" is the ratio of net income to gross income, and "X" is the required rate of the tax on gross income for the utility in question:

$$X = [(1.8725 + 26.75R)] (26.75R - 2.1275) \%$$

provided that in no case governed by the formula shall "X" be less than [5-885] 1.885 per cent or more than [8-2] 4.2 per cent.

However, if the gross income is apportioned under section 239-8(b) or (c), there shall be no adjustment of the rate of tax on the amount of gross income so apportioned to the State on account of the ratio of the net income to the gross income being in excess of fifteen per cent, and it shall be assumed in such case that the ratio is fifteen per cent or less."

SECTION 4. Section 239-7, Hawaii Revised Statutes, is amended to read as follows:

"§239-7 Assessments; payments; chapter 235 applicable. (a) The tax imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times[;] and in the manner (in installments or otherwise) provided by this section[-], except as provided in section 239-5(a), where there is levied and assessed a tax in excess of four per cent upon gross income, the revenues generated from the

tax in excess of the four per cent rate shall be paid to the respective county director of finance at the times and in the manner (in installments or otherwise) provided by this section.

(b) The total amount of the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department[;] or the county director of finance as to payments due the county under section 239-5(a), at [its] the election[;] of the department or the county director, may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department[;] or the county director of finance as to payments due to the county.

(c) The department shall prescribe the forms in which returns shall be made so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes, the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the State director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and the state director of finance in connection with the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the return for the taxable year, or the due date prescribed for the filing of the return, whichever is later. With respect to payments due to a county of the revenues generated from the tax in excess of the four per cent rate imposed under section 239-5(a), a county director of finance shall be afforded such rights and procedures of the department in the enforcement of payment and collection of the taxes assessed and levied under this chapter.”

SECTION 5. Section 239-10, Hawaii Revised Statutes, is amended to read as follows:

“§239-10 Disposition of revenues. All taxes collected under this chapter shall be state realizations[-]; provided that where a tax in excess of the four per cent rate upon gross income is levied and assessed under section 239-5(a), such tax revenues to be paid to the county shall be realizations of such county.”

SECTION 6. Section 239-3, Hawaii Revised Statutes, is repealed.

SECTION 7. Transition period. Commencing with the July 2001, installment of the remaining quarterly or monthly installments of the tax upon gross income which has been levied and assessed for the calendar year 2001 under section 239-5(a), Hawaii Revised Statutes, that portion of each such installment that is described in section 3 of this Act as the tax in excess of the rate of four per cent that is paid to a county if the county provides for a real property tax exemption for real property used by a public utility in its public utility business, shall be paid to the respective county director of finance as provided in section 3 of this Act. Provided that for the period July 2001 to December 2001, if a public utility is not required to pay to a particular county director of finance tax in excess of the rate of four per cent, as provided in section 3 of this Act, the public utility shall not be liable to the State or respective county for such portion of the installments of the tax imposed in excess of the rate of four per cent under section 239-5(a), Hawaii Revised Statutes, for the period July 2001 to December 2001.

SECTION 8. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 65

S.B. NO. 1406

A Bill for an Act Relating to Holidays.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 8-1, Hawaii Revised Statutes, is amended to read as follows:

“§8-1 Holidays designated. The following days of each year are set apart and established as state holidays:

The first day in January, New Year’s Day;
 The third Monday in January, Dr. Martin Luther King, Jr., Day;
 The third Monday in February, Presidents’ Day;
 The twenty-sixth day in March, Prince Jonah Kuhio Kalaniana’ole Day;
 The Friday preceding Easter Sunday, Good Friday;
 The last Monday in May, Memorial Day;
 The eleventh day in June, King Kamehameha I Day;
 The fourth day in July, Independence Day;
 The third Friday in August, [~~Admission Day,~~] Statehood Day;
 The first Monday in September, Labor Day;
 The eleventh day in November, Veterans’ Day;

The fourth Thursday in November, Thanksgiving Day;
 The twenty-fifth day in December, Christmas Day;
 All election days, except primary and special election days, in the county wherein the election is held;
 Any day designated by proclamation by the President of the United States or by the governor as a holiday.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

ACT 66

H.B. NO. 588

A Bill for an Act Relating to Renewal Requirements of the Board of Medical Examiners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-6, Hawaii Revised Statutes, is amended to read as follows:

“**§453-6 Fees; expenses.** (a) No applicant shall be examined under this chapter until the applicant has paid to the board application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses.

(b) Every [person] physician or surgeon holding a license under this chapter shall [reregister] renew the license with the board no later than January 31, of each even-numbered year [and for that registration shall], pay a renewal fee~~[- At the time of reregistration, the physician or surgeon shall present to the board evidence of compliance with a program of]~~, and comply with the category 1 continuing medical education requirements provided in rules adopted by the board.

(c) A physician or surgeon shall meet the category 1 continuing medical education requirements by obtaining credit hours in a category 1 continuing medical education program accredited by the American Medical Association or in other approved category 1 continuing medical education as provided in the board’s rules. To determine compliance, the board may conduct a random audit. A physician or surgeon selected for audit shall be notified by the board. Within sixty days of notification, the physician or surgeon shall provide to the board documentation to verify compliance with the category 1 continuing medical education requirements.

(d) Failure to [reregister] renew, pay the renewal fee, and [present evidence], in the case of audited physicians or surgeons, provide documentation of compliance shall constitute a forfeiture of license, which may be restored only upon the submission of written application therefor [and], payment to the board of a restoration fee[-], and, in the case of audited physicians and surgeons, documentation of compliance.

(e) A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required.”

SECTION 2. Section 453-32.1, Hawaii Revised Statutes, is amended to read as follows:

“~~[§453-32.1]~~ Renewal of certification. (a) Every person holding a certificate under this part shall ~~[reregister]~~ renew the certificate with the board no later than January 31 of each even-numbered year~~[-. Applicants for reregistration shall]~~, pay a renewal fee, and ~~[provide evidence of compliance]~~ comply with the continuing education requirements set forth in the board’s rules.

(b) To determine compliance, the board may conduct a random audit. A person selected for audit shall be notified by the board. Within sixty days of notification, the person shall provide to the board documentation to verify compliance with the continuing education requirements.

(c) Failure to ~~[reregister, including noncompliance with the continuing education requirements,]~~ renew, pay the renewal fee, and, in the case of audited persons, provide documentation of compliance shall constitute a forfeiture of the certificate which may only be restored upon the submission of written application ~~[for reregistration and]~~, payment to the board of a restoration fee[-], and in the case of audited persons, documentation of compliance.

(d) A certificate that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for certification shall be required.”

SECTION 3. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

“§463E-5 Fees; expenses. (a) No applicant shall be examined under this chapter until the applicant has paid to the board application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses.

(b) Every person holding a license under this chapter shall ~~[reregister]~~ renew the license with the board no later than January 31 of each even-numbered year, ~~[and for registration shall]~~ pay a renewal fee[-. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or], and comply with the continuing education ~~[of podiatric medicine taken during the previous biennium.]~~ requirements provided in rules adopted by the board.

(c) To determine compliance, the board may conduct a random audit. A licensee selected for audit shall be notified by the board. Within sixty days of notification, the licensee shall provide to the board documentation to verify compliance with the continuing education requirements.

(d) Failure to ~~[reregister]~~ renew, pay the renewal fee, and ~~[present this proof]~~ in the case of audited licensees, provide documentation of compliance shall constitute a forfeiture of the license, which may be restored only upon the submission of written application therefor ~~[and]~~, payment to the board of a restoration fee[-], and in the case of audited licensees, documentation of compliance.

(e) A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 67

H.B. NO. 630

A Bill for an Act Relating to Information on the Natural Parents of the Adopted Minor Child.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 578-14.5, Hawaii Revised Statutes, is amended to read as follows:

“§578-14.5 Medical information on the natural parents of the adopted minor child. (a) The department of health shall prepare a standard form entitled, “medical information form,” for the purpose of perpetuating medical information on the natural parents of the adopted minor child. This form shall include a request for any information relating to the adopted child’s potential genetic or other inheritable diseases or afflictions, including but not limited to known genetic disorders, inheritable diseases, and similar medical histories, if known, of the parents of the natural parents. The department of health shall make these forms available to all affected public agencies, all child placing organizations approved by the department of human services under section 346-17, attorneys, and other private individuals assisting the natural or adoptive parents in the adoption process, and the family court.

(b) All affected public agencies and all child placing organizations approved by the department of human services under section 346-17 shall make reasonable efforts to complete this form with medical information on both natural parents, to obtain from the natural parents written consent to the release of this information to or for the benefit of the adopted child, and whenever possible, to obtain from the natural mother a signed release to receive a copy of all of her medical records, relating to the birth of the adopted child, which are within the possession of the hospital or other facility at which the child was born. When applicable, the family court may require the petitioner or the petitioner’s agent in the adoption proceeding to obtain this completed form from the natural parents with their consents and the signed release from the natural mother.

(c) Whenever possible, a completed form with the required information on each natural parent shall accompany any document, to be filed with the family court, which requests the relinquishment, termination, or divestiture of parental rights, as provided under sections 571-61 and 587-73(b)(3), and the petition for adoption under this chapter. If available, a copy of the hospital or other facility’s medical records under subsection (b) shall also accompany the document to be filed in the family court. This copy shall not be disseminated to the parties and shall be sealed by the family court pending transmittal to the department of health.

(d) For good cause shown, the family court may waive the requirement in subsection (c).

(e) If the natural parents have been court ordered to complete the forms required in subsection (c) pursuant to section 587-71(n), and have either failed to complete the forms or have failed to return the completed forms to the department of human services, the requirement in subsection (c) shall be waived.

~~[(e)]~~ (f) The completed forms shall be made a part of the records of the department of health.

~~[(f)]~~ (g) The completed forms and, if applicable, the previously sealed copy of the natural mother’s medical records shall be forwarded to the department of health. The department shall extract from the medical records pertinent information relating to inheritable diseases and genetic disorders and shall retain this information

in an abstract. The completed forms and the abstract, if available, shall be included in the department's adoption records.

[(g)] (h) An adopted child upon reaching the age of majority, the adoptive parent, guardian, or custodian on behalf of a minor adopted child, or an authorized designee of the adult adopted child or of the minor's adoptive parent may file a written application with the department of health for access to the information described in subsection [(f)] (g).¹

[(h)] (i) Upon the filing of the application in subsection [(g)] (h), the department of health shall furnish the applicant with a copy of the completed forms and, if available, the abstract of pertinent information from the natural mother's medical records. The department is authorized to disclose the information under this subsection without prior court approval, notwithstanding section 338-20(e).

Nothing in this section shall be construed or applied in any manner to require any public agency or child placing organization to reveal the identities of the natural parents without their consents."

SECTION 2. Section 587-71, Hawaii Revised Statutes, is amended to read as follows:

"§587-71 Disposition hearing. (a) The court may consider the evidence which is relevant to disposition which is in the best interests of the child; provided that the court shall determine initially whether the child's family home is a safe family home. The court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.

(b) If the court determines that the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan, the court shall terminate jurisdiction.

(c) If the court determines that the child's family home is a safe family home with the assistance of a service plan, the court shall place the child and the child's family members who are parties under the family supervision of an authorized agency, return the child to the child's family home, and enter further orders, including but not limited to restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

(d) If the court determines that the child's family home is not a safe family home, even with the assistance of a service plan, the court shall vest foster custody of the child in an authorized agency and enter such further orders as the court deems to be in the best interests of the child.

(e) If the child's family home is determined not to be safe, even with the assistance of a service plan pursuant to subsection (d), the court may, and if the child has been residing without the family home for a period of twelve consecutive months shall, set the case for a show cause hearing as deemed appropriate by the court at which the child's family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), and:

- (1) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
- (2) Proceed pursuant to this section.

(f) Except as provided in subsection (e)(1), if the court does not terminate the court's jurisdiction, the court shall order in every case that the authorized agency

make every reasonable effort, pursuant to section 587-40, to prepare a written service plan, as set forth in section 587-26.

(g) The court may continue the disposition hearing concerning the terms and conditions of the proposed service plan to a date within forty-five days from the date of the original disposition hearing, unless the court deems a later date to be in the best interests of the child; provided that if the court is convinced that a party has signed and fully understands and accepts the service plan, the court may order that the service plan shall constitute the service plan by court order concerning such party and that the service plan be entered into evidence with such party's presence being waived for good cause shown at the continued disposition hearing.

(h) Prior to ordering a service plan at the disposition or continued disposition hearing, the court shall make a finding that each term, condition, and consequence of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem; provided that the court need not enter the findings if the court finds that aggravated circumstances are present.

(i) After a hearing that the court deems to be appropriate, the court may order terms, conditions, and consequences to constitute a service plan as the court deems to be in the best interests of the child; provided that a copy of the service plan shall be incorporated as part of the order. The court need not order a service plan if the court finds that aggravated circumstances are present.

(j) If the court makes a determination that aggravated circumstances are present under this section, the court shall set the case for a show cause hearing as deemed appropriate by the court within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

(k) The court may order that any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and are deemed to be in the best interests of the child.

(l) At any stage of the child protective proceedings, the court may order that a child be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of them of a child as is deemed to be in the best interests of the child. For either the examination or treatment, the court may place the child in a hospital or other suitable facility.

(m) The court shall order reasonable supervised or unsupervised visitation rights to the child's family and to any person interested in the welfare of the child and that the visitation shall be in the discretion of an authorized agency and the child's guardian ad litem, unless it is shown that rights of visitation may be detrimental to the best interests of the child; provided that the court need not order any visitation if the court finds that aggravated circumstances are present.

(n) Each of the natural parents shall be ordered to complete the medical information forms and consent to release medical information required under section 578-14.5 and shall return the completed forms to the department.

~~[(n)]~~ (o) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

- (1) Make a finding that each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and
- (2) Set the case for a review hearing within six months.

~~[(o)]~~ (p) Nothing in this section shall prevent the court from setting a show cause hearing or a permanent plan hearing at any time the court determines such a hearing to be appropriate."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

Note

1. Period should not be underscored.

ACT 68

H.B. NO. 1552

A Bill for an Act Relating to Time Sharing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421J-2, Hawaii Revised Statutes, is amended by amending the definition of “planned community” to read as follows:

“Planned community” means a common interest community, other than a condominium or a cooperative housing corporation[;] or a time share plan, which includes all of the following characteristics:

- (1) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property and providing for rights and responsibilities of a separate entity, the association:
 - (A) Which owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;
 - (B) Which is obligated to maintain certain property it does not own within the planned community for the common use or benefit, or both, of the owners of units within the planned community; or
 - (C) Which is obligated to provide services to any such owners or units;
- (2) Individual owners own separate units which are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;
- (3) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and
- (4) Owners, other than a master developer or declarant, are obligated to pay mandatory assessments by virtue of ownership of a unit within the planned community.”

SECTION 2. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, “agreement of sale” includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to

- any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property that is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction;
 - (4) Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2; ~~[or]~~
 - (5) Payment of any claim under section 431:13-108~~[-]~~ or
 - (6) Indebtedness secured by a time share interest defined in 514E-1, if that time share interest is not otherwise governed by section 478-8(a) or 478-8(b)(1) to (4), and if the rate of interest does not exceed eighteen per cent per year. This subsection shall not be deemed to limit a seller's right to charge interest under section 478-2."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that the amendments made to section 478-8, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2002, pursuant to section 5 of Act 99, Session Laws of Hawaii 1999.

(Approved April 27, 2001.)

ACT 69

H.B. NO. 1587

A Bill for an Act Relating to Acquisition of Hospitals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 323D-71, Hawaii Revised Statutes, is amended by amending the definition of "acquisition" to read as follows:

""Acquisition"" means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, that results in a change of ownership or control of twenty per cent or

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greater or which results in the acquiring person or persons holding a fifty per cent or greater interest in the ownership or control of that hospital[, but does not include the acquisition of an ownership or controlling interest in a private nonprofit hospital by a transferee that:

- (1) ~~Is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity;~~
- (2) ~~Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or [is] a governmental entity; and~~
- (3) ~~Maintains representation from the affected community on the local board].”~~

SECTION 2. Section 323D-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) No person shall engage in the acquisition of a hospital without first:
- (1) Applying for and receiving the approval of the agency; and
 - (2) Notifying the attorney general and, if applicable, receiving approval from the attorney general pursuant to this part[;

~~unless the acquiring person is a nonprofit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or is a governmental entity].”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 70

S.B. NO. 174

A Bill for an Act Relating to Time Sharing Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-30, Hawaii Revised Statutes, is amended to read as follows:

“§514E-30 Scope of chapter. This chapter applies to the offer and sale in Hawaii of time share interests in time share units located in Hawaii. If time share units are located outside of Hawaii, but any offer or sale is made within the State, this chapter, except for sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, and 514E-14, shall apply. As to the offer and sale outside of Hawaii of time share interest in a time share plan which includes time share units located in Hawaii, this chapter, except for sections 514E-2.5, 514E-8, 514E-9, 514E-10(b) and (c), 514E-11, and 514E-11.1 shall apply.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 71

S.B. NO. 176

A Bill for an Act Relating to Time Sharing Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-2.6, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 72

S.B. NO. 982

A Bill for an Act Making an Emergency Appropriation for the State Irrigation Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 91, Session Laws of Hawaii 1999, as amended by Act 281, Session Laws of Hawaii 2000, appropriated a certain designated sum to the department of agriculture to provide funds for the expenditures of the state irrigation program as set forth in chapters 167 and 168, Hawaii Revised Statutes, for the fiscal year beginning July 1, 2000 and ending June 30, 2001.

A critical funding emergency exists. For the past three years, the State's irrigation systems have been experiencing severe drought conditions, which have caused fund balances to decline over this period. Moreover, new irrigation systems have not been able to generate adequate water toll revenues due to unforeseeable delays, including new farmer startups and the installation of meters for water users. For example, the Lower Hamakua ditch will require a detailed inventory of water users before meters can be installed and water tolls can be charged. Due to the size of the ditch, 25 miles long, the inventory will take considerable time to complete and, until then, only sporadic water toll revenues will be generated.

Due to the foregoing problems and delays, any carryover balance from previous years has been depleted and the appropriated funding for fiscal year 2000-2001 will be insufficient until water toll revenues can recover.

The purpose of this Act is to appropriate additional general funds in fiscal year 2000-2001 to ensure the uninterrupted operation and maintenance of the State's irrigation systems.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be deposited into the irrigation system revolving fund for the operation and maintenance of the State's irrigation systems.

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The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 73

S.B. NO. 1104

A Bill for an Act Relating to Authority of Foster Parents to Provide Consents for the Foster Child's Educational and Recreational Needs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§587- Educational and recreational needs. Upon the first day of placement, foster parents may provide consent for the routine educational and recreational needs and activities of the foster children placed in their care, except for purposes regulated under title 8, chapters 53 and 56, of the Hawaii administrative rules.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 74

S.B. NO. 1106

A Bill for an Act Making an Emergency Appropriation for the Department of Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the constitution of the State of Hawaii.

SECTION 2. Act 281, Session Laws of Hawaii 2000, appropriated a sum of money to the department of human services to provide funds for child welfare services under the department's social services division for the fiscal period beginning July 1, 2000, and ending June 30, 2001.

A critical funding emergency exists. At a hearing relating to the *Felix v. Cayetano* consent decree on August 2, 2000, the United States District Court for the District of Hawaii ordered the department to hire interagency case coordinators and case aides to deliver direct and support services to children, foster parents, and social workers involved with court-ordered benchmarks.

The court also ordered the expansion of contracted services to recruit and support foster parents for special needs children and to expand comprehensive services for the child welfare services population.

To comply with these orders, additional funds are urgently needed.

SECTION 3. It is the legislature's intention to fully fund the fiscal year 2000-2001 emergency appropriation requested by each department affected by the *Felix v. Cayetano* consent decree. Funding for fiscal biennium 2001-2003 is dependent upon the monetary needs demonstrated and is reflected in the General Appropriations Act for fiscal biennium 2001-2003.

As the executive branch has submitted written requests for the specific amounts which it believes are necessary for it to meet the *Felix* decree, it is expected that with the passage of *Felix* emergency appropriation bills for each department and the budget bill, the departments will meet their obligations under the consent decree in a timely manner for this year and for fiscal year 2001-2002.

By written communication submitted by the governor to the speaker of the house of representatives dated February 6, 2001, the department of human services requested an appropriation of \$1,800,000 in connection with the *Felix* decree, as an emergency appropriation.

The purpose of this Act is to fully fund that request, as part of the full funding for all the departments' *Felix* needs for this and the coming fiscal year.

SECTION 4. Act 116, Session Laws of Hawaii 1999, is amended by amending section 4 to read as follows:

“SECTION 4. There is established in the department of human services the child welfare services demonstration project to assist and support social workers to improve the delivery of child welfare services. The department of human services may hire employees for this demonstration project without regard to chapters 76, 77, and 78, Hawaii Revised Statutes. The demonstration project shall be supervised by child welfare services staff, who shall be responsible for assignments and supervision of the demonstration project employees and coordination with the other units. The child welfare services demonstration project shall cease to exist on ~~[June 28, 2001.]~~ July 1, 2001.”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,800,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be used to:

- (1) Hire interagency case coordinators and case aides to deliver direct and support services to children, foster parents, and social workers involved with court-ordered benchmarks;
- (2) Expand contracted services to recruit and support foster parents for special needs children; and
- (3) Expand comprehensive services for the child welfare services population.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 75

S.B. NO. 1114

A Bill for an Act Making an Emergency Appropriation for the Department of Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 281, Session Laws of Hawaii 2000, appropriated a sum of money to the department of human services to provide funds for child welfare services under the department's social services division for the fiscal period beginning July 1, 2000, and ending June 30, 2001.

A critical funding emergency exists. The department is mandated by both state and federal statute to provide foster care to abused and neglected children and to find permanent homes for those children who are unable to return to their original homes. Foster board and board-related costs, permanency assistance, and difficulty-of-care payments for foster and adoptive parents, permanent custodians, and guardians of children with special needs must be paid to support child placements.

To comply with the department's mandates, additional funds are urgently needed.

SECTION 3. There is appropriated or authorized from the sources of funding indicated below, the following sums or so much thereof as may be necessary for fiscal year 2000-2001 to provide foster board and board-related costs, permanency assistance, and difficulty-of-care payments for foster and adoptive parents, permanent custodians, and guardians of children with special needs:

General funds:	\$4,882,863
Other federal funds:	\$2,711,014

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

ACT 76

S.B. NO. 1127

A Bill for an Act Making an Emergency Appropriation to the Child and Adolescent Mental Health Division.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for the child and adolescent mental health division for the fiscal period beginning July 1, 2000, and ending June 30, 2001, a critical funding emergency now exists. The program will expend all appropriated general and special funds before the end

of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to certain emotionally disturbed children and adolescents. The increases in school-based services and residential placements are the primary contributing factors to this financial situation.

The purpose of this Act is to appropriate additional general and special fund moneys to allow the child and adolescent mental health division to continue to provide services to certain emotionally disturbed children and adolescents.

SECTION 3. It is the legislature's intention to fully fund the fiscal year 2000-2001 emergency appropriation requested by each executive department affected by the *Felix v Cayetano* consent decree. Funding for fiscal biennium 2001-2003 is dependent upon the monetary needs demonstrated and is reflected in the General Appropriations Act for fiscal year 2001-2003.

As the executive branch has submitted written requests for the specific amounts which it believes are necessary for it to meet the *Felix* decree, it is expected that with the passage of *Felix* emergency appropriation bills for each department and the budget bill, the departments will meet their obligations under the consent decree in a timely manner for this year and for fiscal year 2001-2002.

By written communication:

- (1) Submitted by the department of health to the House committee on finance dated April 5, 2001, the department of health requested an appropriation of \$41,976,926 in connection with the *Felix* consent decree, as an emergency appropriation; and
- (2) Submitted by the department of health to the House committee on finance dated April 6, 2001, the department of health requested an appropriation of \$478,250 in connection with the *Felix* consent decree, as an emergency appropriation.

The purpose of this Act is to fully fund these requests as part of the full funding for all the executive departments' *Felix* needs for this and the coming fiscal year.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$41,976,926 or so much thereof as may be necessary for fiscal year 2000-2001 to be used in support of services provided to certain emotionally disturbed children and adolescents.

SECTION 5. There is appropriated out of the behavioral health administration title IV-E reimbursement, interdepartmental transfer fund the sum of \$478,250 or so much thereof as may be necessary for fiscal year 2000-2001 to be used in support of training costs of staff employed by or contracted to the department of health, or contracted or deployed to the Felix Monitoring Project for the purpose of improving services provided to certain emotionally disturbed children and adolescents.

SECTION 6. The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

A Bill for an Act Relating to Increasing Development Flexibility of Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii's airports division's leasing and development procedures are cumbersome and inflexible. This situation has resulted in inefficiencies when the airports division of the department of transportation desires to expeditiously develop its lands and facilities. The legislature further finds that the economic well-being of the State depends in part on the efficient use of all of its resources and that fuller utilization of its resources will enhance and complement efforts to revitalize Hawaii's economy.

The purpose of this Act is to provide the airports division of the department of transportation with sufficient flexibility to develop lands and facilities, subject to the approval of the board of land and natural resources, without sacrificing health, safety, environmental, and shoreline management requirements.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, airport related, agricultural processing, cattle feed production, aquaculture, marine, and maritime operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport related, agricultural, aquaculture, and maritime industries;
- (2) The disposition shall not exceed a maximum term of thirty-five years; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purpose of this subsection “agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii[-] and “airport related” means a purpose or activity that requires air transportation to achieve that purpose or activity.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2001.)

A Bill for an Act Relating to Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the curtailment of the sugar industry on Kauai will negatively affect the economy of the island. Past experience with sugar cane company shutdowns has shown that the closures have come at great cost, both financially and socially, to the persons directly impacted and to the State in general. The closure on Kauai has resulted in the loss of hundreds of jobs, with

additional losses that may come in other sectors of the economy as a result of reduced spending.

The legislature further finds that a financial stimulus is required to assist businesses on Kauai to replace the sugar industry as an employer and economic force. A method of providing this stimulus is to provide assistance to start-up or expand agriculture and aquaculture enterprises.

The purpose of this Act is to authorize loans up to \$5,000,000, to provide financial assistance to both the agriculture and aquaculture enterprises on Kauai.

SECTION 2. In addition to any loan authorized under chapters 155 or 219, Hawaii Revised Statutes, the department of agriculture may make loans for the aggregate total amount of \$5,000,000 from the agriculture loan revolving fund or aquaculture loan revolving fund to carry on the purposes of this Act. The board of agriculture may waive any portion under chapters 155 or 219, Hawaii Revised Statutes, as deemed necessary to effectuate this Act with the exception of the following conditions:

- (1) Interest charged shall not be less than three per cent per year, simple interest; and
- (2) Collateral shall consist of assets deemed reasonable by the board of agriculture.

SECTION 3. This Act shall take effect upon its approval, and shall be repealed on July 31, 2003.

(Approved April 30, 2001.)

ACT 79

S.B. NO. 483

A Bill for an Act Relating to Restraint of Trade.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 480-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsections (b) and (c), any person who is injured in the person’s business or property by reason of anything forbidden or declared unlawful by this chapter:

- (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit; provided that indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable attorneys fees together with the costs of suit[; and] in actions not brought under section 480-14(c); and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys fees together with the cost of suit.”

SECTION 2. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person other than the attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this

chapter. The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. Actions brought under this section shall be brought as *parens patriae* on behalf of natural persons residing in the State, to secure threefold compensatory damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.”

SECTION 3. Section 480-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A final judgment or decree rendered in any civil or criminal proceeding brought by the State under this chapter shall be *prima facie* evidence against the defendant in any action or proceeding brought by any other party under this chapter, or by the State, county, or city and county, under section 480-14, against the defendant as to all matters respecting which the judgment or decree would be an estoppel between the parties thereto. This section shall not apply to consent judgments or decrees entered before any complaint has been filed; provided that when a consent judgment or decree is filed, the attorney general shall set forth at the same time the alleged violations and reasons for entering into the consent judgment or decree. No ~~[such]~~ consent judgment or decree that is entered before any complaint has been filed shall become final until sixty days from the filing of the consent judgment or decree or until the final determination of any exceptions filed, as hereinafter provided, whichever is later. During the sixty-day period any interested party covered under section 480-13 may file verified exceptions to the form and substance of the consent judgment or decree, and the court, upon a full hearing thereon may approve, refuse to ~~[enter]~~ approve, or may modify the consent judgment or decree.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

ACT 80

H.B. NO. 628

A Bill for an Act Relating to Foster Board Allowances for Students.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-16, Hawaii Revised Statutes, is amended by adding to subsection (a) a new definition to be appropriately inserted and to read as follows:

““Former foster youth” means a person formerly placed under the jurisdiction of the department as a foster child by the family court pursuant to chapter 587 who has attained the age of eighteen.”

SECTION 2. Section 346-17.4, Hawaii Revised Statutes, is amended to read as follows:

“**§346-17.4 [Foster] Higher education board allowances for students.** (a) ~~[Any eligible]~~ Eligible former foster ~~[child]~~ youths shall be eligible for ~~[foster]~~ higher education board allowances after reaching the age of majority and the ~~[foster]~~

higher education board payments for that [person] former foster youth shall be paid to an accredited institution of higher learning, another intermediary contracted by the department, or to the [person's] former foster youth's former foster parents, as appropriate, provided that:

- (1) The [person] former foster youth is twenty-one years old or younger; and
- (2) ~~[The person]~~ Within one school year after high school completion, the former foster youth is attending or has been accepted to attend an accredited institution of higher learning on a full-time basis, or on a part-time basis for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate[; and
- (3) ~~The person has continued to reside in the foster home wherein the person reached the age of majority, or has continued to be accepted as a member of the foster family and be under the guidance and support of the foster family].~~

(b) Reimbursement to foster parents for the former foster [child's maintenance-cost] youth's higher education board cost up to the maximum allowable board amount shall be made retroactive to the [person's] former foster youth's entry into an accredited institution of higher learning on a full-time basis, but no earlier than July 1, 1987, or on a part-time basis for the first academic year, but no earlier than July 1, 1999.

(c) [Foster] Higher education board allowances may be applied to costs incurred in undertaking full-time studies or part-time studies for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate, at an institution of higher learning.

(d) The department's standards relating to income resources of [the] foster [child] children shall be applicable to this section.

~~[(e) For the purposes of this section, the term "eligible foster child" means a child who has been placed into foster care by the family court pursuant to chapter 587.]~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 2, 2001.)

ACT 81

H.B. NO. 654

A Bill for an Act Relating to Safe Drinking Water.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 340E-7, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) No person shall install or repair any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system with any pipe, solder, [or] flux, plumbing fittings, or fixtures that [is] are not lead free. “Lead free” with respect to solders and flux means containing not more than 0.2 per cent lead ~~[and]~~, with respect to pipes and pipe fittings means containing not more than 8.0 per cent lead~~[-]~~ and with respect to plumbing fittings and fixtures means those in compliance

with National Sanitation Foundation Standard 61, section 9. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

ACT 82

S.B. NO. 212

A Bill for an Act Relating to Temporary Instruction Permit.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-110, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant’s immediate possession, to drive a motor vehicle upon the highways for a period of ~~[one hundred eighty days;]~~ one year; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit. A person who is not licensed to operate the category of motor vehicles to which the driving training course applies shall not operate a motor vehicle in connection with the driving training course without a valid temporary instruction permit.”

2. By amending subsection (f) to read:

“(f) No holder of a category 1 or 2 temporary instruction permit ~~[for the operation of a motorcycle or motor scooter]~~ shall have the permit renewed ~~[more than once]~~, nor shall the holder be issued another temporary instruction permit for the same purpose, unless the holder has taken the examination for a ~~[motorcycle or motor scooter]~~ category 1 or 2 license at least once prior to the expiration of the ~~[second]~~ temporary instruction permit ~~[and at least once prior to the expiration of each subsequent temporary instruction permit issued thereafter]~~. If the holder of a temporary instruction permit fails to meet the requirements of this section, the holder shall not be permitted to apply for another category 1 or 2 temporary instruction permit ~~[for a motor scooter or motorcycle]~~ for a period of three months. Nothing in this subsection shall affect the rights and privileges of any holder of a category 1 or 2 temporary instruction permit ~~[for the operation of a motorcycle or motor scooter]~~ from obtaining a temporary instruction permit or driver’s license for the operation of any other type of motor vehicle.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

ACT 83

S.B. NO. 797

A Bill for an Act Relating to Public Service.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to delete outdated references to language in chapter 85, Hawaii Revised Statutes, repealed in 1993, from sections 78-8 and 78-9, Hawaii Revised Statutes, and to delete language from section 78-9, Hawaii Revised Statutes, that has been interpreted as limiting legislative bodies' subpoena power.

SECTION 2. Section 78-8, Hawaii Revised Statutes, is amended to read as follows:

“§78-8 Persons subject to sections 78-8 to 78-11. The persons subject to sections 78-8 to 78-11 are those elected to or appointed or employed in the government of the State or any county, or in any political subdivision thereof, or appointed to or employed in any office or employment any part of the compensation of which is paid out of public funds[, and who are required to take and subscribe a loyalty oath or affirmation pursuant to chapter 85. All persons exempted from the requirements of chapter 85 are and shall be exempted from sections 78-8 to 78-11].”

SECTION 3. Section 78-9, Hawaii Revised Statutes, is amended to read as follows:

“§78-9 Failure to appear or testify, termination of employment. If any person subject to sections 78-8 to 78-11, after lawful notice or process, wilfully refuses or fails to appear before any court or judge, any legislative committee, or any officer, board, or commission, [~~or other body authorized to conduct any hearing or inquiry,~~] or having appeared refuses to testify or to answer any question regarding (1) the government, property or affairs of the State or of any political subdivision thereof, or (2) the person's qualifications for public office or employment [~~(including matters pertaining to loyalty or disloyalty)],~~ or (3) the qualifications of any officer or employee of the State or any political subdivision thereof, on the ground that the person's answer would tend to incriminate the person, or refuses to testify or to answer any such question without right, the person's term or tenure of office or employment shall terminate and the office or employment shall be vacant, and the person shall not be eligible to election or appointment to any office or employment under the State or any political subdivision thereof. To the extent that the State is without authority to require, under the constitution or laws of the United States, compliance by any public officer or public employee herewith, sections 78-8 to 78-11 shall not apply to the officer or employee, but the sections shall apply to the extent that they or any part thereof can lawfully be made applicable.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

A Bill for an Act Making an Emergency Appropriation for Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. It is the legislature's intention to fully fund the fiscal year 2000-2001 emergency appropriation requested by each department affected by the *Felix v. Cayetano* consent decree. Funding for fiscal biennium 2001-2003 is dependent upon monetary needs demonstrated and is reflected in the General Appropriations Act for fiscal biennium 2001-2003.

As the executive branch has submitted written requests for the specific amounts which it believes are necessary for them to meet the *Felix* decree, it is expected that with the passage of *Felix* emergency appropriation bills for each department and the budget bill, the departments will meet their obligations under the consent decree in a timely manner for this year and for fiscal year 2001-2002.

By written communication submitted by the superintendent of education to the committee on finance of the house of representatives dated March 19, 2001, the department of education requested an appropriation of \$27,931,118 in connection with the *Felix* decree, as an emergency appropriation.

The purpose of this Act is to fully fund that request, as part of the full funding for all the departments' *Felix* needs for this and the coming fiscal year.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$27,931,118 or so much thereof as may be necessary for fiscal year 2000-2001 for the comprehensive school support services program (EDN 150).

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

A Bill for an Act Making an Emergency Appropriation for Early Intervention Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for family health services division for the period beginning July 1, 2000, and ending June 30, 2001, a critical need for further funding exists based on a August 3, 2000, federal court stipulation between the State of Hawaii and the plaintiff class relating to the *Felix v. Cayetano* consent decree.

Pursuant to this revised consent decree in *Felix v. Cayetano*, Civil No. 93-00367, the department of health must insure universal screening and assessment for all newborns, with home visitation for environmentally at risk infants and children by the healthy start program, and for biologically at risk and developmentally delayed infants and children by the early intervention section, from birth to three years of age, as mandated by P.L. 105-17, the Individuals with Disabilities Education Act, part C; must assure that no eligible child will remain without specified services or appropriate alternatives for more than thirty days and the early intervention section ordered by the federal court must demonstrate improvement in the delivery of services for children under three years of age with autism.

Because of the expanded coverage of services and the additional services required by the revised consent decree, existing funds will be expended before the end of this fiscal year.

The purpose of this Act is to increase the authorized appropriation for early intervention services for the early intervention section and the healthy start program of the department of health for fiscal year 2000-2001 to maintain compliance with the revised consent decree in Civil No. 93-00367, filed August 3, 2000.

SECTION 3. It is the legislature's intention to fully fund fiscal year 2000-2001 emergency appropriation requested by each department affected by the *Felix v. Cayetano* consent decree. Funding for fiscal biennium 2001-2003 is dependent upon the monetary needs demonstrated and is reflected in the General Appropriations Act for fiscal biennium 2001-2003.

As the executive branch has submitted written requests for the specific amounts which it believes are necessary for it to meet the *Felix* decree, it is expected that with the passage of *Felix* emergency appropriation bills for each department and the budget bill, the departments will meet their obligations under the consent decree in a timely manner for this year and for fiscal year 2001-2002.

By written communication submitted by the governor to the speaker of the house of representatives dated February 2, 2001, the department of health requested an appropriation of \$7,217,390 in connection with the *Felix* decree, as an emergency appropriation.

The purpose of this Act is to fully fund that request, as part of the full funding for all the departments' *Felix* needs for this and the coming fiscal year.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,883,240 or so much thereof as may be necessary for fiscal year 2000-2001 for the early intervention section and the sum of \$5,334,150 for the healthy start program or so much thereof as may be necessary for fiscal year 2000-2001 to be used to provide early intervention services for infants and children from birth to three years of age.

SECTION 5. The sums appropriated shall be expended by the department of health for purposes of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

A Bill for an Act Relating to the United States Selective Service System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the penalties associated with noncompliance with the United States Selective Service are severe. The penalties include but are not limited to felony conviction and permanent preclusion from acquiring many federal benefits such as federal employment and federal financial aid for students.

The legislature further finds that it is important to protect state residents from the penalties associated with failing to register with the United States Selective Service System and to help ensure that any future draft is fair and equitable to all potential draftees.

The purpose of this Act is to require applicants for a motor vehicle driver's license or instruction permit to comply with the registration requirements of title 50 United States Code Appendix section 453 ("Military Selective Service Act"). In addition, this Act requires applicants to authorize the examiner of drivers and attorney general to collect and electronically transmit the information necessary to register the applicant with the Selective Service System.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§286- Military Selective Service Act; Selective Service System registration. (a) Qualified applicants for a motor vehicle drivers license pursuant to section 286-107 or 286-108 or an instruction permit pursuant to section 286-110 shall be registered with the United States Selective Service System in compliance with title 50 United States Code Appendix section 453, as amended.

(b) Every qualified applicant identified in subsection (a) shall be required to authorize the examiner of drivers to:

- (1) Collect the necessary personal information required for registering the qualified applicant with the United States Selective Service System; and
- (2) Electronically transmit the information to the Selective Service System pursuant to subsection (d) for purposes of registering the qualified applicant with the United States Selective Service System.

(c) The examiner of drivers shall notify all qualified applicants identified in subsection (a) that by submitting an application, the qualified applicant is consenting to registration with the United States Selective Service System, if so required by federal law.

(d) The examiner of drivers shall collect from a qualified applicant the necessary personal information required for registering the qualified applicant with the United States Selective Service System. The examiner of drivers shall transmit the necessary personal information of the qualified applicant in an electronic format to the United States Selective Service System to register the qualified applicant.

(e) For purposes of this section, "qualified applicant" means male United States citizens and immigrants at least eighteen years of age but less than twenty-six years of age."

SECTION 3. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

“§286-104 What persons shall not be licensed. The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; ~~or~~
- (5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109~~[-]; or~~
- (6) To any person who is not in compliance with section 286-

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129.”

SECTION 4. Section 286-107, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) No driver’s license shall be renewed by the examiner of drivers unless [the]:

- (1) The examiner of drivers is satisfied of the applicant’s fitness to continue to operate a motor vehicle ~~[and unless the];~~
- (2) The fee required by subsection (d) is tendered together with the application for renewal~~[-]; and~~
- (3) The applicant complies with section 286-.”

SECTION 5. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver’s license, except as otherwise provided in this part. The examination shall include a test of:

- (1) The applicant’s eyesight and any further physical examination that the examiner of drivers finds necessary to determine the applicant’s fitness to operate a motor vehicle safely upon the highways;
- (2) The applicant’s ability to understand highway signs regulating, warning, and directing traffic;
- (3) The applicant’s knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; and

- (4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director.

The examiner of drivers shall require every applicant to comply with section 286-

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant for a driver's license.

For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286-107.5(a)."

SECTION 6. Section 286-110, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person aged fifteen years and six months or more who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license issued under this part may apply for a temporary instruction permit at the office of the examiner of drivers in the county in which the applicant resides[-]; provided that the applicant complies with section 286- ."

SECTION 7. The county's motor vehicle driver license program pursuant to section 286- shall be implemented to collect and transmit the necessary personal information of qualified applicants in an electronic format to the United States Selective Service System to register the qualified applicants when funds to implement this Act are made available to the State and its political subdivisions by the United States Selective Service System.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on January 1, 2002.

(Approved May 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 87

S.B. NO. 1509

A Bill for an Act Relating to Offenses Against Property Rights.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-830, Hawaii Revised Statutes, is amended to read as follows:

"§708-830 Theft. A person commits theft if the person does any of the following:

- (1) Obtains or exerts unauthorized control over property. A person obtains, or exerts control over, the property of another with intent to deprive the other of the property.
- (2) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.
- (3) Appropriation of property. A person obtains, or exerts control over, the property of another [~~which~~] that the person knows to have been lost or mislaid[;] or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner.
- (4) Obtaining services by deception. A person intentionally obtains services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services. [~~Where~~] When compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.
- (5) Diversion of services. Having control over the disposition of services of another to which a person is not entitled, the person intentionally diverts those services to the person's own benefit or to the benefit of a person not entitled thereto.
- (6) Failure to make required disposition of funds.
 - (a) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person's own property reserved in equivalent amount, and deals with the property as the person's own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person's legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer's or employee's own.
 - (b) A person obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and the person intentionally fails to make the payment or disposition at the proper time.
- (7) Receiving stolen property. A person intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, the person acquires the property for a consideration [~~which~~] that the person knows is far below its reasonable value.
- (8) Shoplifting.

- (a) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.
- (b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
- (c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

The unaltered price or name tag or other marking on goods or merchandise, [or] duly identified photographs or photocopies thereof, or printed register receipts, shall be prima facie evidence of value and ownership of such goods or merchandise. Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting, to the same extent as the goods or merchandise themselves.”

SECTION 2. Section 708-836, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) For the purposes of this section, “owner” means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership[-]; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership, “owner” means the legal owner.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 2, 2001.)

ACT 88

S.B. NO. 1044

A Bill for an Act Relating to Public Employee Health Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter:

“Board” means the board of trustees of the Hawaii employer-union health benefits trust fund described in section -5.

“Carrier” means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health benefits or long-term care benefits under group insurance contracts.

“Contribution” means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

“County” means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

“Dependent-beneficiary” means an employee-beneficiary’s:

- (1) Spouse;
- (2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
- (3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child’s reaching the age of nineteen years.

“Employee” means an employee or officer of the State, county, or legislature,

(1) Including:

- (A) An elective officer;
- (B) A per diem employee;
- (C) An officer or employee under an authorized leave of absence;
- (D) An employee of the Hawaii national guard although paid from federal funds;
- (E) A retired member of the employees’ retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
- (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,

(2) But excluding:

- (A) A designated beneficiary of a retired member of the employees’ retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
- (C) A part-time, temporary, and seasonal or casual employee.

“Employee-beneficiary” means:

- (1) An employee;
- (2) The beneficiary of an employee who is killed in the performance of the employee’s duty;
- (3) An employee who retired prior to 1961;
- (4) The beneficiary of a retired member of the employees’ retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
- (5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or

(6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry; provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

"Fund" means the Hawaii employer-union health benefits trust fund established in section -30.

"Health benefits plan" means:

- (1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Long-term care benefits plan" means:

- (1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Part-time, temporary, and seasonal or casual employee" means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

"Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.

"Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours, including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section -5.

PART II. BOARD OF TRUSTEES

§ -5 Composition of board. The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor as follows:

- (1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries. The trustees shall be appointed from a list of three nominees per trustee submitted by the exclusive employee representative organizations; and
- (2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms.

§ -6 Term of a trustee; vacancy. The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term. Each term shall commence on January 1 and expire on December 31. The governor may reduce the terms of those initially appointed so as to provide, as far as practicable, for the expiration of an equal number of terms at intervals of one year.

A vacancy on the board shall be filled by appointment of the governor; provided that the criteria used for selecting the successor shall be the same criteria

used for selecting the person's predecessor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

If by the end of a trustee's term a trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed.

§ -7 Chair, vice-chair, and secretary-treasurer. The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer.

§ -8 Compensation and expenses. Each trustee shall serve without compensation, but the trustees may be reimbursed from the fund for any reasonable expenses incurred in carrying out the purposes of the fund.

§ -9 Legal adviser. The attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund.

§ -10 Meetings; notice. Meetings may be scheduled, and notice of meetings shall be provided as follows:

- (1) The chairperson may call a meeting of the board at any time by giving at least six calendar days' written notice of the time and place of the meeting to all trustees; and
- (2) A majority of the trustees may call a meeting of the board by giving at least ten calendar days' written notice of the time and place to all other trustees.

§ -11 Quorum; board actions; voting. (a) Six trustees, three of whom represent the public employer and three of whom represent employee-beneficiaries, shall constitute a quorum for the transaction of business.

(b) Trustees representing the public employers shall collectively have one vote. Trustees representing the employee-beneficiaries shall collectively have one vote.

For any vote of the trustees representing the public employers to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the public employers shall be deemed to have abstained from voting.

For any vote of the trustees representing the employee-beneficiaries to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the employee-beneficiaries shall be deemed to have abstained from voting.

An abstention shall not be counted as either a vote in favor or against a matter before the board.

(c) Any action taken by the board shall be by the concurrence of at least two votes. In the event of a tie vote on any motion, the motion shall fail. Upon the concurrence of six trustees, the board shall participate in dispute resolution.

§ -12 Records and minutes. The board shall keep records and minutes of all meetings of the board.

PART III. BOARD POWERS AND DUTIES

§ -15 Administration of the fund. The board shall administer and carry out the purpose of the fund. Health and other benefit plans shall be provided at a cost affordable to both the public employers and the public employees.

§ -16 Health benefits plan; carriers. (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits.

§ -17 Group life insurance benefits or group life insurance program. The board may provide benefits under a group life insurance benefits program or group life insurance program to employees.

§ -18 Long-term care benefits plan; carrier or third-party administrator. (a) The board may establish a long-term care benefits plan or plans for employee-beneficiaries; the spouses, parents, grandparents, in-law parents, and in-law grandparents of employee-beneficiaries; and qualified-beneficiaries. The plan or plans shall be at no cost to employers and shall comply with article 10H of chapter 431.

(b) Notwithstanding any other law to the contrary, long-term care benefits shall be available only to:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;
- (2) Employee-beneficiary in-law parents and grandparents; and
- (3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five,

who comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) Without regard to chapter 103D, the board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits.

§ -19 Plans for part-time, temporary, and seasonal or casual employees.

(a) The board may offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. The board may determine eligibility for part-time, temporary, and seasonal or casual employees by rules exempt from chapter 91 as provided in section -26.

(b) The board shall establish the medical, hospital, or surgical benefits plan or plans, which shall be exempt from the minimum group requirements of article 10A of chapter 431. The medical, hospital, or surgical benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of medical, hospital, or surgical services, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the medical, hospital, or surgical benefits plan or plans. Each part-time, temporary, and seasonal or casual employee enrolled for medical, hospital, or surgical benefits shall pay monthly contributions directly to the board's designated carriers. The monthly contributions may include the carrier's administrative costs.

§ -20 Selection of benefits plan carriers or third-party administrators.

Procurement of a carrier or third-party administrator for any benefits plan shall be exempt from chapter 103D.

§ -21 Eligibility. (a) The board shall establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified-beneficiary, consistent with the provisions of this chapter.

(b) A retired member of the employees' retirement system; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
- (2) Without regard to the date of the retired member's retirement.

(c) A dependent of a retired member shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
- (2) Without regard to the date of the retired member's retirement.

§ -22 Benefits plan information and enrollment. (a) The board shall make information summarizing approved benefits plans available to each employee-beneficiary. The information shall, to the extent reasonably possible, be distributed to each employee-beneficiary at the same time and in the same manner.

(b) The board shall establish conditions and procedures for benefits plan enrollment.

§ -23 Health benefits plan supplemental to medicare. The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;
- (2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to \$50.00 per month, or such other amount to be determined by the board, for voluntary medical insurance coverage under medicare for retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88. The contribution shall be made for each:
 - (A) Employee-beneficiary who is a retired employee;
 - (B) Employee-beneficiary's spouse while the employee-beneficiary is living; and
 - (C) The employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary;
- (3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
- (4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired

- employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
- (5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund.

§ -24 Other powers. In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from chapters 76 and 77 and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;
- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) Without the necessity of complying with the requirements of chapter 103D, retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter.

§ -25 Other duties. The board shall:

- (1) Authorize charges and payments from the fund only upon vouchers countersigned by the chairperson and any other person designated by the board;
- (2) Maintain accurate records and accounts of all financial transactions of the fund that shall be audited annually and summarized in an annual report to the governor and legislature;
- (3) Maintain suitable and adequate records and provide information requested by State and county employers as necessary to carry out the purpose of the fund;
- (4) Procure fiduciary liability insurance and error and omissions coverage for all trustees; and
- (5) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys.

§ -26 Rules; policies, standards, and procedures. (a) The board may adopt rules for the purposes of this chapter. Rules shall be adopted without regard to chapter 91. Rule-making procedures shall be adopted by the board and shall minimally provide for:

- (1) Consultation with employers and affected employee organizations with regard to proposed rules;

- (2) Adoption of rules at open meetings that permit the attendance of any interested persons;
 - (3) Approval of rules by the governor; and
 - (4) Filing of rules with the lieutenant governor.
- (b) The board may also issue policies, standards, and procedures consistent with its rules.

(c) The board may adopt rules, without regard to chapter 91, governing dispute resolution procedures in the event of impasse in decision-making; provided that the rules shall be adopted with the concurrence of six trustees.

PART IV. TRUST FUND

§ -30 Hawaii employer-union health benefits trust fund; establishment. There is established outside the state treasury, a trust fund to be known as the "Hawaii Employer-Union Health Benefits Trust Fund." The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes.

§ -31 Trust fund; purpose. (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections -32 and -37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

§ -32 State and county contributions; active employees. (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

- (1) The monthly contribution shall be a specified dollar amount;
- (2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
- (3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
- (4) If the State or any of the counties establish cafeteria plans in accordance with title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contribu-

tions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee.

§ -33 State and county contributions; retired employees. (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
- (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section -36;
- (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
- (4) An employee-beneficiary who retired before July 1, 1984;
- (5) An employee-beneficiary who:
 - (A) Was hired before July 1, 1996;
 - (B) Retired after June 30, 1984; and
 - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
 - (A) Was hired after June 30, 1996; and
 - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section -36;
 and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$218.00 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$671.00 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$342.00 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$928.00 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year (July 1st until June 30th) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the

medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1st or on the business day closest to November 1st of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

§ -34 State and county contributions; retired employees with fewer than ten years of service. (a) This section shall apply to state and county contributions to the fund for employees specified in paragraph (1)(E) of the definition of "employee" in section -1 who:

- (1) Were hired on or before June 30, 1996; and
- (2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the base monthly contribution set forth under section -33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for supplemental medicare family or non-medicare family plan, as appropriate.

§ -35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service. (a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to:

- (1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996; and
- (2) An employee hired prior to July 1, 1996, who has at least ten years of credited service and who has had a break in service.

For purposes of this section, "transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees enrolled in medicare or non-medicare health benefit plans with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base monthly contribution set forth under section -33(b); and
- (2) For retired employees enrolled in medicare or non-medicare health benefit plans with at least fifteen but fewer than twenty-five years of service, a monthly contribution of seventy-five per cent of the base monthly contribution set forth under section -33(b).

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

§ -36 State and county contributions; employees hired after June 30, 2001, and retired. (a) This section shall apply to state and county contributions to the fund for employees hired after June 30, 2001, and who retired, except that this section shall not apply to:

- (1) An employee hired prior to July 1, 2001, who transfers employment after June 30, 2001; and
- (2) An employee hired prior to July 1, 2001, who has at least ten years of credited service and who has had a break in service.

For the purposes of this section, "transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after July 1, 2001, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section -33(b);
- (2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section -33(b);
- (3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to one-hundred per cent of the base medicare or non-medicare monthly contribution set forth under section -33(b); and
- (4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph (1)(E) of the definition of "employee" in section -1.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate.

§ -37 Group life insurance benefits plans for retired employees; contributions. (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a base monthly contribution as set forth in subsection (b) for each retired employee enrolled in the fund's group life insurance benefits plan under section -34, -35, and -36.

(b) Effective July 1, 2003, there is established a base monthly contribution of \$4.16 for each retired employee enrolled in a group life insurance plan; provided that the monthly contribution shall not exceed the actual cost of the group life insurance benefits plan. The base composite monthly contribution shall be adjusted annually beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years. The percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, “medicare part B premium rate” means the rate published in the Federal Register each year on November 1st or on the business day closest to November 1st of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

§ -38 State and county contributions not considered wages or salary.

Contributions made by the State or the counties under this part shall not be considered wages or salary of an employee-beneficiary. No employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund.

§ -39 Reimbursement for state contributions.

(a) All state agencies having control of funds other than the general fund shall reimburse the State for contributions made by the State pursuant to sections -32, -33, -34, -35, -36, and -37 on account of agency employees whose compensation is paid in whole or part from funds other than the general fund.

(b) All state and county agencies receiving federal funds, which may be expended for the purpose of replacing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to sections -32, -33, -34, -35, -36, and -37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds.

§ -40 Employee-beneficiary contributions; health benefit plans.

(a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary’s contribution to be withheld and transmitted to the fund monthly by the comptroller, employees’ retirement system, or finance officer who disburses the employee-beneficiary’s compensation, pension, or retirement pay. If an employee-beneficiary’s contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution:

- (1) In the case of an employee-beneficiary who normally receives the employee-beneficiary’s compensation from the comptroller or employees’ retirement system, directly to the fund by the first day of each month; or
- (2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month.

(c) Notwithstanding subsection (a), an employee-beneficiary’s monthly contribution to the fund shall include the amount that would have been the employee-beneficiary’s contribution if the employee-beneficiary had not elected to participate in the cafeteria plan.

§ -41 Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan.

(a) During the period the long-term care benefits plan is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-

beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator as specified by the board.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator as specified by the board."

SECTION 2. Section 87-28, Hawaii Revised Statutes, is amended to read as follows:

"§87-28 Other powers. In addition to the power to administer the fund, the board of trustees may:

- (1) Collect, receive, deposit, withdraw, and invest money on behalf of the fund;
- (2) Appoint an administrator [and] who shall be exempt from chapters 76 and 77 and shall serve under and at the pleasure of the board. The board of trustees may appoint staff necessary to carry out this chapter, subject to the limitations of available appropriations and chapters 76 and 77 and section 78-1;
- (3) Make payments of periodic charges and pay for reasonable expenses incurred to[:
 - (A) ~~Perform financial audits of the fund and claims audits of its insurance carriers; or~~
 - (B) ~~Carry~~ carry out the purposes of the fund; ~~or~~
- (4) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers; or
- [~~(4)~~](5) Require any department, agency, or employee of the State and county to furnish information to the board to carry out the purposes of this chapter."

SECTION 3. Chapter 87, Hawaii Revised Statutes, is repealed.

SECTION 4. Effective July 1, 2003, all positions and employees of the Hawaii public employees health fund who are subject to chapters 76, Hawaii Revised Statutes, shall be transferred to the Hawaii employer-union health benefits trust fund. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All civil service positions and incumbents of the Hawaii public employees health fund transferred by this Act shall remain in the civil service and subject to chapters 76 and 77, Hawaii Revised Statutes; provided that in the event the civil service administrator position becomes vacant prior to July 1, 2003, its successor shall be appointed pursuant to section 87-28 as amended in section 2 of this Act. When such positions are vacated on or after July 1, 2003, the positions shall be exempt from civil service and prospective appointments shall be made pursuant to section 1 of this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes

in status may be made pursuant to the applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, assets, including funds to be refunded to employees and any funds in benefit plans and cafeteria plans, records, equipment, machines, computer software and hardware, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the Hawaii public employees health fund shall be transferred to the Hawaii employer-union health benefits trust fund, effective July 1, 2003.

SECTION 6. (a) The governor shall appoint all trustees of the Hawaii employer-union health benefits trust fund no later than December 31, 2001. The trustees representing employee-beneficiaries shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members shall be appointed for four years; two members shall be appointed for three years; and one member shall be appointed for two years.

When submitting the list of nominees for the trustees representing the employee-beneficiaries, the exclusive employee representative organizations shall indicate preferences for the length of the trustee's term for each set of nominees recommended to the governor.

(b) Upon appointment, the board of trustees of the Hawaii employer-union health benefits trust fund may develop and issue rules, policies, and procedures and contract for health benefits plans and group life insurance benefits plans, which shall become effective on July 1, 2003. The board of trustees and administrator of the Hawaii public employees health fund shall give necessary assistance to the board of trustees of the Hawaii employer-union health benefits trust fund during the transition.

SECTION 7. Notwithstanding chapter 103D, Hawaii Revised Statutes, the board of trustees of the Hawaii public employees health fund under chapter 87, Hawaii Revised Statutes, may extend current health benefits and life insurance plan contracts through June 30, 2003.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2001-2002 to carry out the purposes of this Act, including the hiring of necessary staff, consultants, and other administrative expenses. All unexpended and unencumbered balances of the appropriation made by this section as of the close of business on June 30, 2002, shall not lapse and shall be carried over and may be expended during fiscal year 2002-2003; provided that on June 30, 2003, all unexpended and unencumbered balances shall lapse into the general fund of the State.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2001; provided that:

- (1) Section 3 shall take effect on July 1, 2003; and
- (2) All rules governing the Hawaii public employees health fund under chapter 87, Hawaii Revised Statutes, if not contrary to this Act, shall remain in effect until such time that the Hawaii employer-union health benefits trust fund adopts new rules.

(Approved May 3, 2001.)

ACT 89

S.B. NO. 1046

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State and the counties face an unfunded liability for payment of health benefits for their public employees of a high of \$24,800,000,000 for 2013, as projected by the auditor in its 1999 *Actuarial Study and Operational Audit of the Hawaii Public Employees Health Fund*. Low and intermediate estimates are not much lower and range from \$7,900,000,000 to \$11,400,000,000. As of 1998, the unfunded liability for the public employees health fund had already reached a high of \$7,400,000,000 with low and intermediate projections of \$3,600,000,000 and \$4,500,000,000.

Currently, the system of providing health benefits to public employees operates by paying for benefits contracted for by the public employees health fund on a "pay as you go" basis, without any limits on cost. In the past, when health care costs were minimal and health benefits were not considered a significant component of an employee's compensation, this was not an issue. However, as more advanced treatment, procedures, and medications are developed, their costs have also increased. Health benefits are now considered an extremely important part of an employee's compensation precisely because health care now costs so much. In addition, as more employees begin to live longer and as they learn to demand to use more benefits, the system is proving unable to keep up. The reality is that the State and the counties will be unable to pay for health benefits for their employees in the future without seriously cutting from other portions of governmental budgets if no changes are made.

The legislature intends to address the issue of spiraling costs by instituting a ceiling on public expenditures for health benefits for public employees and retirees. To allow the public employees health fund to work within the employer's fiscal limitations, this Act expressly provides the public employees health fund with greater flexibility to, among other things, determine the types of plans, the design of plans, and the delivery of plan services.

SECTION 2. Section 87-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution equal to one-half of the retired employee's monthly Medicare or non-Medicare premium[:]

- (1) For hospital, medical, and surgical benefits of a health benefits plan for each of their respective employee beneficiaries or their respective employee beneficiaries and their dependent beneficiaries enrolled under this section;

- (2) ~~For prescription drug benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;~~
- (3) ~~For vision care benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;~~
and
- (4) ~~For adult dental benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their spouses enrolled under this section.]~~ for the retired employee's health benefits plan or plans determined by the board pursuant to section 87-22.

If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall not exceed the monthly contribution of a family plan for both of them.”

SECTION 3. Section 87-4.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) For the purpose of this section, the retired employee’s monthly Medicare and non-Medicare premiums for the ~~[hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan]~~ health benefits plan shall be established annually by the board and shall be equal to the ~~[retired employee’s] Medicare and non-Medicare premiums for the [hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan]~~ health benefits plan contracted by the fund with the largest enrollments.”

SECTION 4. Section 87-4.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The State, through the department of budget and finance and the several counties through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the retired employee’s monthly medicare or nonmedicare premium for the ~~[following benefits]~~ retired employee’s health benefits plan or plans determined by the board pursuant to section 87-22 for retired employees with ten or more years but fewer than fifteen years of service; seventy-five per cent of the retired employee’s monthly medicare or nonmedicare premium for the ~~[following benefits]~~ retired employee’s health benefits plan or plans determined by the board pursuant to section 87-22 for retired employees with at least fifteen but fewer than twenty-five years of service[;:

- (1) ~~For hospital, medical, and surgical benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;~~
- (2) ~~For prescription drug benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;~~
- (3) ~~For vision care benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;~~
and
- (4) ~~For adult dental benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their spouses enrolled under this section].~~

If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county, after an employee’s retirement pursuant to

this section, shall not exceed the monthly contribution of a family plan for both of them.”

SECTION 5. Section 87-4.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) For the purpose of this section, the retired employee’s monthly medicare and nonmedicare premiums for the ~~[hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan]~~ health benefits plan shall be established annually by the board and shall be equal to the ~~[retired employee’s]~~ medicare and nonmedicare premiums for the ~~[hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan]~~ health benefits plan contracted by the fund with the largest enrollments.”

SECTION 6. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

“§87-22 Determine health benefits plan; contract with carriers. (a) ~~[The]~~ Notwithstanding any provision of this chapter to the contrary, the board of trustees shall determine the health benefits plan or plans, including but not limited to the type of plans to be made available, which shall be excepted from the minimum group requirements of chapter 431[. The health benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits, vision treatment and care, medical, and dental benefits.], the design of the plans, and the delivery of plan services.

(b) The board may contract for [the following]¹ health benefits plans; ~~provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:];~~ including but not limited to:

- (1) An indemnity benefit plan or plans under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services;
- (2) A service benefit plan or plans under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services or, under certain conditions, payment is made by a carrier to an employee-beneficiary;
- (3) Health maintenance organization plans, which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers;
- (4) Plans to offer dental benefits through an indemnity plan or plans, a service benefit plan or plans, dental maintenance organization plans, or combinations thereof;
- (5) Plans to offer prescription drug benefits through an indemnity plan or plans, a service benefit plan or plans, health maintenance organization plans, or combinations thereof;
- (6) Plans to offer vision care benefits through an indemnity plan or plans, a service benefit plan or plans, health maintenance organization plans, or combinations thereof; or
- (7) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in the health benefits plans authorized in paragraphs (1) to (6).”

SECTION 7. Section 87-27, Hawaii Revised Statutes, is amended to read as follows:

“§87-27 Supplemental plan to federal Medicare. Any other provision of this chapter notwithstanding, the board of trustees shall establish, effective July 1, 1966, a health benefits plan which takes into account benefits available to an employee-beneficiary and spouse under the federal Medicare plan, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under federal Medicare but the plan so established by the board shall be supplemental to the federal Medicare plan;
- (2) The contribution for voluntary medical insurance coverage under federal Medicare ~~[may be paid by the fund, in such manner as the board shall specify, in the case of]~~ shall be equal to a monthly contribution of \$50 a month, or the federal Medicare plan rate, whichever is less for an employee-beneficiary who is a retired employee, and spouse while the employee-beneficiary is living, including members of the old pension system and after death the employee-beneficiary's spouse provided the spouse qualifies as an employee-beneficiary; provided that the counties, through their respective departments of finance, shall reimburse the fund for any contributions made for county employee-beneficiaries under this paragraph;
- (3) The benefits available under the plan, when taken together with the benefits available under the federal Medicare plan, as nearly as is possible, shall ~~[approximate]~~ be comparable to the benefits available [under the plans set forth in section 87-22:] to employee-beneficiaries and spouses who are not eligible for the federal Medicare plan. If, for any reason, a situation develops where the benefits available under the supplemental plan and the federal Medicare plan substantially differ from those that would otherwise be available, the board may correct this inequity to assure substantial equality of benefits;
- (4) Notwithstanding any other law to the contrary, all employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the federal Medicare Part B medical insurance plan shall enroll in that federal plan as a requirement to receive the contributions and to participate in the employee benefit plans described in this chapter. This paragraph shall pertain to retired employees and their spouses and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
- (5) The board of trustees shall determine which employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the federal Medicare Part B medical insurance plan, may participate in such other plans as are set forth in section 87-22.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2001.

(Approved May 3, 2001.)

Note

1. So in original.

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that while the State's economy is demonstrating some evidence of recovery after almost a decade of low growth and recession, the demands on government for the delivery of core services continue to increase. The legislature also finds that the use of tax and fee hikes to meet projected government expense increases are counterproductive to the very economic recovery that produces revenues to fund those expenses. As such, it is more important than ever that government have the ability to deliver services by the most efficient means possible.

To this end, the State and its counties have long used the private sector to provide public services to Hawaii's citizens. Historically, government agencies and private organizations have benefited from outsourcing to increase efficiency and take advantage of larger economies of scale, and have used resources that are owned or have been developed by the private sector to achieve savings for the long-term good. When time and need have suggested that opportunities would be missed or that costs might be avoided or minimized, government has used private sector services and expertise to take advantage of the opportunity rather than "start from scratch." In certain instances, outsourcing could provide the flexibility needed to enable government to remain fluid in its ability to effectively provide services for the ever changing needs of its constituency.

However, in recent years, certain circumstances have contributed to curtailing state and county governments' ability to utilize privatization as a means of cutting costs and more efficiently managing its resources.

Because of the Hawaii supreme court's decision in the consolidated cases *Konno v. County of Hawaii*, 85 Haw. 61 (1997) and other occurrences, the basic authority of state and county government to deliver public services through the private sector has been called into question.

In *Konno*, the Hawaii supreme court invalidated a contract between the county of Hawaii and a private landfill developer and operator after concluding that under the State's civil service laws, only civil servants could perform the services and fill the positions historically and customarily provided or filled by civil servants. While the supreme court in *Konno* "emphasize[d] that nothing in this opinion should be interpreted as passing judgment, one way or the other, on the wisdom of privatization," and acknowledged that "[w]hether or not, as a policy matter, private entities should be allowed to provide public services entails a judgment ordinarily consigned to the legislature", it also noted that "the civil service encompasses those services that have been customarily and historically provided by civil servants", and concluded that, absent express legislative authority to obtain services from other sources, civil servants must provide these services.

Consequently, state and county agencies, in some instances, were precluded from entering into service contracts with private providers to obtain the services they needed, reduce direct labor, material, and equipment costs, and take advantage of indirect savings through contractual provisions for insurance and indemnification against third-party and regulatory liability claims.

Recognizing the negative fiscal impact the *Konno* decision would have on government, the legislature enacted Act 230, Session Laws of Hawaii 1998 (Act 230), which provided the necessary express authority to the State and counties to contract with the private sector. Act 230 also established a committee to develop a

managed process that would allow state and county agencies to contract with the private sector for the provision of government services, thereby making government more efficient and cost-effective. The justification for establishing the process was to ensure that when government decides to seek services from the private sector, it relies on the accurate assessment of costs and perceived benefits in order to make informed and responsible decisions. Although the managed process committee completed its work mandated pursuant to Act 230 and submitted its recommendations to the governor and the legislature, a complete working model of managed competition has yet to be implemented.

Not willing to wait or rely solely upon the results of Act 230 to make government more efficient and responsive to the needs of the public, the legislature enacted Act 253, Session Laws of Hawaii 2000 (Act 253), otherwise known as the Civil Service Modernization Act. Act 253 contained sweeping employment reforms that shape the way government service will be defined in the twenty-first century. Under this new paradigm, no longer will public agencies be resigned to the “one size fits all” mentality of hiring, allocating, training, and retaining their employees. Act 253 in part, enables the State, counties, and other public jurisdictions to custom tailor their workforce to suit their particular needs. Act 253 also authorized the use of experimental modernization projects by public agencies as a means to modernize and streamline their operations in lieu of privatizing the functions of the public agency.

Although the managed competition process embodied in Act 230 and the experimental modernization project concept authorized under Act 253 paved the way towards improving government efficiency and provided management with some of the tools necessary to effect change, the legislature believes that more can be done to expedite the process of improving the cost-effectiveness of providing services to the public.

As such, in furtherance of the new paradigm embraced under Acts 230 and 253, the legislature asserts that privatization should be included as a management tool to assist government in remaining fluid in its ability to effectively provide services for the ever changing needs of its constituency. The legislature believes that providing public sector management with a full complement of management tools to choose from...namely privatization, managed competition, and experimental modernization projects...affords public sector management a vast array of options to achieve its goal of government efficiency.

However, the legislature is fully aware of the negative impact privatization and managed competition will have on public sector employees’ ability to negotiate fair and adequate compensation packages, as the balance of negotiating power will be tipped in favor of public sector management. In order to ensure that the fragile balance between employer and employee negotiating leverage is maintained, the legislature believes that certain public employees should have their right to strike reinstated and that the essential employee statutes should be repealed.

The purpose of this Act is to make government more efficient and economical by:

- (1) Enabling the governor and the executives of other jurisdictions to utilize privatization as a management tool to provide government services more efficiently;
- (2) Authorizing the governor and the executives of other jurisdictions to utilize a managed competition process as a management tool to provide government services more efficiently, if they so choose;
- (3) Addressing and resolving the uncertainty generated by the Hawaii supreme court’s decision in *Konno v. County of Hawaii*, 85 Haw. 61 (1997), regarding government’s ability to rely upon the private sector for services government needs or is required to provide;

- (4) Restoring the right to strike for all collective bargaining units except firefighters, police officers, and institutional, health, and correctional workers; and
- (5) Repealing references to essential employees and essential positions.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER PRIVATIZATION

§ -1 **Scope and application.** This chapter preempts and supersedes all other state law with regard to determining whether services, including services obtained in conjunction with the procurement of goods and construction, funded by the State or any of its counties, should be provided exclusively by government or obtained through government contracts from the private sector. Procurement laws shall be applied, as appropriate, if a determination is made pursuant to this chapter that a service should be obtained by contract from the private sector.

§ -2 **Determination; standards.** (a) Notwithstanding any law to the contrary, including but not limited to chapters 46, 76, 77, 78, 89, and 89A, any other applicable civil service law, customary or historical past practices, or the fact that the services hereinafter described may have been performed by persons or positions in civil service, any state or county official in whom procurement authority is vested by law may enter into a contract financed by public funds, with a private entity to obtain services, including services provided in conjunction with the procurement of goods or construction, from a private entity, when there is reasonable basis to believe that the service of equivalent or better quality than that which could be provided by a government agency can be provided at lower cost.

(b) For purposes of this chapter, a “private entity” is any individual, company, or organization that is not an employee or agency within the federal, state, or county government.

(c) In the determination made pursuant to this chapter, the state or county official shall consider whether contracting with the private entity will:

- (1) Jeopardize the government’s ability to provide the service if the private entity fails to perform, or the contract becomes unprofitable or impossible for a private entity to perform;
- (2) Impact on any employee covered by civil service laws; provided that the impact shall not prevent the procurement of services pursuant to this chapter;
- (3) Affect the nature of the service the agency needs, including whether:
 - (A) The service is self-contained or part of a larger service delivery system;
 - (B) The service is geographically dispersed;
 - (C) The service is a core or ancillary government service and if in-house resources are available or needed;
 - (D) Government control is necessary;
 - (E) Government accountability can be shared; and
 - (F) Governmental authority will be diluted;
- (4) Increase the potential for achieving cost savings, including:
 - (A) The need to abandon or repurchase capital improvements or equipment that are not fully depreciated;

- (B) The extent to which the service is available in the private sector marketplace; and
- (C) The extent to which federal or state restrictions may reduce private sector interest in providing or performing the needed or required service; and
- (5) Affect the extent to which the services are needed or required, and how the criteria to select a service provider can be described in objective specifications.
- (d) Any employee displacements shall be subject to section 46- or 89A-1(e) as appropriate.

§ -3 **Annual reports.** Each state and county department and agency that uses the contracting process set out in this chapter, shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of each year beginning with 2002. The report shall include:

- (1) An itemization of all services that were outsourced or subjected to the processes set out in this chapter;
- (2) The agency's or department's justification that standards for determination were met;
- (3) The cost of services obtained through the process set out in this chapter;
- (4) A copy of all contracts entered into under this chapter; and
- (5) An accounting of civil service employees displaced as a consequence of this chapter."

PART III

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Authority of counties to engage in the process of managed competition; established. (a) Subject to the approval of the governor and the respective mayor of the county, the agency designated by the mayor with the responsibility to oversee the managed process for public-private competition for government services shall:

- (1) Assist the mayor in formulating the county's philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate and negotiate the terms and conditions or the managed competition process on behalf of the county with exclusive representatives of affected public employees and private contractors.

(b) If a county executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the county may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the county shall use its resources for placing, retraining, and providing voluntary severance incentives for displaced employees. Methods that may be used to minimize or avoid the adverse effects of an agency's decision to secure needed services from contractors may include:

- (1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee's employment as an employee of the contractor;

- (2) Reassignment to another civil service position the employee is qualified to fill;
- (3) Retraining to qualify the employee for reassignment; and
- (4) Severance incentives.”

SECTION 4. Section 89A-1, Hawaii Revised Statutes is amended to read as follows:

“§89A-1 Office of collective bargaining [~~in the state government established~~] and managed competition. (a) There shall be established an office of collective bargaining and managed competition in the office of the governor to assist the governor in [~~negotiating with and entering into written agreements between the public employers~~] the implementation and review of the managed process of public-private competition for particular government services through the managed competition process and negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

(b) The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. [~~The governor shall appoint and remove the chief negotiator and the deputy negotiators, who shall not be subject to chapters 76, 77, and 89. Effective January 1, 1989, and January 1, 1990, the salary of the chief negotiator shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively. The chief negotiator and deputy negotiators shall be included in any benefit program generally applicable to the officers and employees of the State. All other employees shall be appointed in accordance with chapters 76 and 77. The chief negotiator shall serve as one of the governor’s designated representatives as set forth in section 89-6(b).~~] The governor shall appoint the chief negotiator and may also appoint deputy negotiators to assist the chief negotiator. The governor, at pleasure, may remove the chief negotiator and any deputy negotiator. All other employees shall be appointed by the chief negotiator. All employees in the office of collective bargaining and managed competition shall be included in any benefit programs generally applicable to employees of the State.

(c) Subject to the approval of the governor, the office of collective bargaining and managed competition shall:

- (1) Assist the governor in formulating the State’s philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate and negotiate the terms and conditions of the managed competition process on behalf of the State with exclusive representatives of affected public employees and private contractors.

(d) No employee of the office of collective bargaining and managed competition shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position in existence on the effective date of this Act shall not be exempted from civil service until the incumbent in that position on the effective date of this Act vacates that position.

(e) If the State executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the State may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the State shall use its resources for placing,

retraining, and providing voluntary severance incentives for displaced employees. Methods that may be used to minimize or avoid the adverse effects of an agency's decision to secure needed services from contractors may include:

- (1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee's employment as an employee of the contractor;
- (2) Reassignment to another civil service position the employee is qualified to fill;
- (3) Retraining to qualify the employee for reassignment; and
- (4) Severance incentives."

SECTION 5. Act 253, Session Laws of Hawaii 2000, section 104, is amended by amending section 89A-1, Hawaii Revised Statutes, to read as follows:

“§89A-1 Office of collective bargaining and managed competition. (a)

There shall be established an office of collective bargaining and managed competition in the office of the governor to assist the governor in implementation and review of the managed process of public-private competition for particular government services through the managed competition process and negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

(b) The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. The governor shall appoint the chief negotiator and may also appoint deputy negotiators to assist the chief negotiator. The governor, at pleasure, may remove the chief negotiator and any deputy negotiator. All other employees shall be appointed by the chief negotiator. All employees in the office of collective bargaining and managed competition shall be included in any benefit programs generally applicable to employees of the State.

(c) Subject to the approval of the governor, the office of collective bargaining and managed competition shall:

- (1) Assist the governor in formulating the State's philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate and negotiate the managed competition process [to ensure the negotiations of subject matters that are negotiable under the collective bargaining laws in the public sectors.] on behalf of the State with exclusive representatives of affected public employees and private contractors.

(d) No employee of the office of collective bargaining and managed competition shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position in existence on¹ July 1, 2002, shall not be exempted from civil service until the incumbent in that position on¹ July 1, 2002, vacates that position.

(e) If the State executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the State may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the State shall use its resources for placing, retraining, and providing voluntary severance incentives for displaced employees.

Methods that may be used to minimize or avoid the adverse effects of an agency's decision to secure needed services from contractors may include:

- (1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee's employment as an employee of the contractor;
- (2) Reassignment to another civil service position the employee is qualified to fill;
- (3) Retraining to qualify the employee for reassignment; and
- (4) Severance incentives."

PART IV

SECTION 6. Section 89-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If a dispute between a public employer and the exclusive representative of [~~appropriate bargaining unit (2), supervisory employees in blue collar positions; appropriate bargaining unit (3), nonsupervisory employees in white collar positions; appropriate bargaining unit (4), supervisory employees in white collar positions; appropriate bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; appropriate bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; optional appropriate bargaining unit (9), registered professional nurses;~~] optional appropriate bargaining unit (10), institutional, health, and correctional workers; optional appropriate bargaining² unit (11), firefighters; or optional appropriate bargaining unit (12), police officers]; ~~or optional appropriate bargaining unit (13), professional and scientific employees, other than registered professional nurses;~~] exists over the terms of an initial or renewed agreement more than ninety working days after written notification by either party to initiate negotiations, either party may give written notice to the board that an impasse exists and the board shall assist in the voluntary resolution of the impasse by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.

If, after eighteen working days from the date of impasse, the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel, the board shall immediately notify the employer and the exclusive representative that the issues in dispute shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

Within twenty-one working days from the date of impasse, two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The impartial third member of the arbitration panel shall be selected by the two previously selected panel members and shall chair the arbitration panel.

In the event that the two previously selected arbitration panel members fail to select an impartial third arbitrator within twenty-four working days from the date of

impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the impartial arbitrator shall be selected. Within five calendar days after receipt of such list, the parties shall alternately strike names therefrom until a single name is left, who shall be immediately appointed by the board as the impartial arbitrator and chairperson of the arbitration panel.

Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final offer which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions other than those relating to contributions by the State and respective counties to the Hawaii public employees health fund which each party is proposing for inclusion in the final agreement.

Within twenty calendar days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.

Within thirty calendar days after the conclusion of the hearing, a majority of the arbitration panel shall issue a final and binding decision.

In reaching a decision, the arbitration panel shall give weight to the factors listed below and shall include in a written opinion an explanation of how the factors were taken into account in reaching the decision:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public.
- (4) The financial ability of the employer to meet these costs.
- (5) The present and future general economic condition of the counties and the State.
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii.
- (7) The average consumer prices for goods or services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of

contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii public employees health fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii public employees health fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

The costs for mediation shall be borne by the board. All other costs incurred by either party in complying with these provisions, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them, except that all costs and expenses of the impartial arbitrator shall be borne equally by the parties."

SECTION 7. Section 89-12, Hawaii Revised Statutes, is amended to read as follows:

"§89-12 Strikes, rights and prohibitions. (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board, or (2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration [~~or (3) is an essential employee~~].

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

~~[(c)(1) If a strike, which may endanger the health or safety of the public, is about to occur or is in progress, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to:~~

~~(A) Designation of essential positions; and~~

- (B) ~~Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.~~
- (2) The public employer shall give notice to an essential employee:
 - (A) ~~By serving or delivering a copy thereof to the essential employee being notified; or~~
 - (B) ~~By mailing a copy thereof by certified or registered mail, return receipt requested, deliverable to the addressee only, addressed to the essential employee being notified at the essential employee's place of residence; or~~
 - (C) ~~If service cannot be effected as set forth in (2)(A) or (2)(B) above, or if the strike is in progress, by publishing at least once a day for three consecutive days, a copy thereof in both of the newspapers having the largest general circulation in the State. After the final publication, it shall be conclusively presumed that the essential employee has received such notice.~~

~~After receipt of notice, it shall be the duty of the essential employee to contact the public employer for the essential employee's work assignment.]~~

[~~(d)~~] (c) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the public employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the public employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.

[~~(e)~~] (d) If any employee organization or any employee is violating or failing to comply with the requirements of this section, or if there is reasonable cause to believe that an employee organization or an employee will violate or fail to comply with such requirements, the public employer affected shall, forthwith, institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section is conferred upon each circuit court, and each court may issue in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. The right to a jury trial shall not apply to any proceeding brought under this section."

SECTION 8. Section 89-2, Hawaii Revised Statutes, is amended by deleting the definitions of "essential employee" and "essential position".

[~~"Essential employee" means an employee designated by the public employer to fill an essential position.~~

~~"Essential position" means any position designated by the board as necessary to be worked in order to avoid or remove any imminent or present danger to the public health or safety, which position shall be filled by the public employer."}]~~

SECTION 9. Act 253, Session Laws of Hawaii 2000, section 100, is amended by amending subsections (d) and (e) of section 89-11, Hawaii Revised Statutes, to read as follows:

"(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining

unit (4), supervisory employees in white collar positions; bargaining unit (5), teachers and other personnel of the department of education; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; [or] bargaining unit (7), faculty of the University of Hawaii and the community college system [τ]; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; or bargaining unit (13), professional and scientific employees, the board shall assist in the resolution of the impasse as follows:

- (1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public from a list of qualified persons maintained by the board.
- (2) Fact-finding. If the impasse continues twenty days after the date of impasse, the board shall immediately appoint a fact-finding panel of not more than three members, representative of the public from a list of qualified persons maintained by the board. The fact-finding panel shall, in addition to powers delegated to it by the board, make recommendations for the resolution of the impasse pursuant to subsection (f). The fact-finding panel, acting by a majority of its members, shall transmit a report on its findings of fact and recommendations for the resolution of the impasse to both parties within sixty days after its appointment and notify the board of the date when it transmitted the fact-finding report.
- (3) Mediation. If the impasse continues ten days after the transmittal of the fact-finding report, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The parties shall make the fact-finding report available to the mediator or mediators.
- (4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report which shall be released by the board for public information.
- (5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the employers' recommendations for the settlement of the impasse on all cost items together with the fact-finding report. The exclusive representative may submit to the appropriate legislative bodies its recommendations for the settlement of the cost items in impasse.
- (e) If an impasse exists between a public employer and the exclusive representative of bargaining unit [(2), ~~supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; or bargaining unit (12), police officers; or bargaining unit (13), professional and scientific employees~~], the board shall assist in the resolution of the impasse as follows:

- (1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.
- (2) Arbitration. If the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.
 - (A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.
 - (B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions which each party is proposing for inclusion in the final agreement.
 - (C) Arbitration hearing. Within one hundred twenty days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.
 - (D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision."

ACT 91

SECTION 10. Act 253, Session Laws of Hawaii 2000, section 101, is amended by amending subsection (a) of section 89-12, Hawaii Revised Statutes, to read as follows:

“(a) It shall be unlawful for any employee to participate in a strike if the employee:

- (1) Is not included in the appropriate bargaining unit involved in an impasse; or
- (2) Is included in the appropriate bargaining unit involved in an impasse that has been referred to arbitration for a decision[; or
- (3) ~~Is an essential employee, but only when the employee is designated to fill an essential position].”~~

PART V

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 12. No contract between the State or a county and a private entity that was authorized or subject to Act 230, Session Laws of Hawaii 1998, in existence on the effective date of this Act, shall be impaired or diminished by the enactment of part II of this Act; provided that any such contract that fails to qualify under part II of this Act shall be terminated by agreement of the parties or by the State or county as soon as the contract may be lawfully terminated without impairment.

SECTION 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 14. This Act shall take effect upon its approval; provided that sections 5, 9, and 10 shall take effect on July 1, 2002; and provided further that part II of this Act shall be repealed on June 30, 2007.

(Approved May 3, 2001.)

Notes

1. Prior to amendment “the effective date of this Act” appeared here.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 91

S.B. NO. 1512

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . OFFENSES AND OTHER PROVISIONS RELATING TO LAW ENFORCEMENT ANIMALS

§710-A Definitions. As used in this part:

“Law enforcement horse or dog” means a horse or dog that is trained to perform law enforcement duties under the supervision of a law enforcement officer who is performing the law enforcement officer’s duties.

“Substantial bodily injury” means bodily injury which causes:

- (1) Major avulsion, laceration, or penetration of the skin;
- (2) Burns of at least second degree severity;
- (3) Bone fracture;
- (4) Serious concussion; or
- (5) Tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

§710-B Endangering a law enforcement horse or dog in the first degree.

(1) A person endangers a law enforcement horse or dog in the first degree if that person intentionally or knowingly inflicts substantial bodily injury on, or causes the death of a law enforcement horse or dog that the person knows or reasonably should know is a law enforcement horse or dog.

(2) Endangering a law enforcement horse or dog in the first degree is a class C felony.

§710-C Endangering a law enforcement horse or dog in the second degree.

(1) A person endangers a law enforcement horse or dog in the second degree if that person recklessly inflicts substantial bodily injury on, or causes the death of a law enforcement horse or dog that the person knows or reasonably should know is a law enforcement horse or dog.

(2) Endangering a law enforcement horse or dog in the second degree is a misdemeanor.

§710-D Interfering with a law enforcement horse or dog. (1) A person interferes with a law enforcement horse or dog if, with the intent to distract, agitate, or harm the law enforcement horse or dog, the person intentionally or knowingly strikes, shoves, or kicks the law enforcement horse or dog or subjects the law enforcement horse or dog to offensive physical contact while the law enforcement horse or dog is in performance of its official duties.

(2) Interfering with a law enforcement horse or dog is a petty misdemeanor.

§710-E Restitution for law enforcement horse or dog. Any person convicted of violating section 710-B or 710-C shall make restitution to the law enforcement agency or officer that owns the horse or dog for:

- (1) Veterinary services or other medical costs;
- (2) Replacement costs if the animal is disabled or killed;
- (3) Lost wages of the law enforcement officer; and
- (4) Any other costs related to violation of section 710-B or 710-C.”

SECTION 2. Section 701-118, Hawaii Revised Statutes, is amended to read as follows:

“§701-118 General definitions. In this Code, unless a different meaning plainly is required:

- (1) “Statute” includes the Constitution of the State and a local law or ordinance of a political subdivision of the State;
- (2) “Act” or “action” means a bodily movement whether voluntary or involuntary;
- (3) “Omission” means a failure to act;
- (4) “Conduct” means an act or omission, or, where relevant, a series of acts or a series of omissions, or a series of acts and omissions;

- (5) "Actor" includes, a person who acts, or, where relevant, a person guilty of omission;
- (6) "Acted" includes, where relevant, "omitted to act";
- (7) "Person," "he," "him," "actor," and "defendant" include any natural person and, where relevant, a corporation or an unincorporated association;
- (8) "Another" means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions; ~~and~~
- (9) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States [-]; and
- (10) "Law enforcement officer" means any public servant, whether employed by the State or county or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses."

SECTION 3. Section 710-1010, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, the person intentionally obstructs, impairs, or hinders:

- (a) The performance of a governmental function by a public servant acting under color of the public servant's official authority; ~~or~~
- (b) The enforcement of the penal law or the preservation of the peace by a ~~peace~~ law enforcement officer acting under color of the ~~peace~~ law enforcement officer's official authority [-] or
- (c)¹ The operation of a radio, telephone, television, or other telecommunication system owned or operated by the State or one of its political subdivisions."

SECTION 4. Chapters 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, and 712A, Hawaii Revised Statutes, are amended by substituting the term "law enforcement officer", or like term, wherever the term "peace officer", or like term, appears as the context requires.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval; provided that section 1 shall be repealed on June 1, 2002.

(Approved May 7, 2001.)

Notes

- 1. "(c)" should be underscored.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 92

H.B. NO. 1273

A Bill for an Act Relating to Transportation

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the airport revenue fund for airports administration (TRN 195) the sum of \$185,000,000, or so much thereof as may be necessary for fiscal year 2000-2001, to be used for the defeasance of certain outstanding airports system revenue bonds.

SECTION 2. The sum appropriated shall be expended by the department of transportation for the purpose of this Act. Funds not used for this purpose shall be lapsed into the airport revenue fund.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 15, 2001.)

ACT 93

S.B. NO. 1165

A Bill for an Act Relating to Penalties for Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 195-8, Hawaii Revised Statutes, is amended to read as follows:

“§195-8 Penalty. (a) Any person who violates any of the laws and rules applicable to the reserves system, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined not ~~[more]~~ less than \$1,000 or imprisoned not more than one year, or both, for each offense.

(b) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(c) Any criminal action against a person for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.”

SECTION 2. Section 195D-9, Hawaii Revised Statutes, is amended to read as follows:

“§195D-9 Penalty. (a) Any person who violates any of the provisions of this chapter of the provisions of any rule adopted hereunder shall be guilty of a misdemeanor and shall be punished as follows:

- (1) For a first ~~[conviction]~~ offense by a fine of not less than \$250 ~~[not more than \$1,000]~~ or by imprisonment of not more than one year, or both; and
- (2) For a second or subsequent ~~[conviction]~~ offense within five years of a previous conviction by a fine of not less than \$500 ~~[not more than \$1,000]~~ or by imprisonment of not more than one year, or both.

(b) In addition to the above penalties, except for violations under approved habitat conservation plans under section 195D-21 or approved safe harbor agreements under section 195D-22 as determined by the board, a fine of ~~[\$500]~~ \$5,000 for each specimen of a threatened species and ~~[\$1,000]~~ \$10,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to section 183D-10.5.

(d) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife or plant taken, killed, injured, or damaged in violation of this chapter or any rule adopted thereunder.

(f) Any criminal action against a person for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 17, 2001.)

ACT 94

H.B. NO. 384

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 703-309, Hawaii Revised Statutes, is amended to read as follows:

“§703-309 Use of force by persons with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable under the following circumstances:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and:
 - (a) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and
 - (b) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.
- (2) The actor is a principal, the principal’s agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:
 - (a) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, [øø] other group, or at activities supervised by the department of education held on or off school property and that the use of force is consistent with the welfare of the minor; and
 - (b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (1)(b).
- (3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:
 - (a) The force is employed with due regard for the age and size of the incompetent person and is reasonably related to the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of the incompetent person’s misconduct, or, when such incompetent person is in a hospital or other institution for the incompetent person’s care and custody, for the maintenance of reasonable discipline in the institution; and
 - (b) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.
- (4) The actor is a doctor or other therapist or a person assisting the doctor or therapist at the doctor’s or therapist’s direction, and:
 - (a) The force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and
 - (b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the minor’s or incompetent person’s parent or guardian or other person legally competent to consent in the minor’s or

incompetent person's behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

- (5) The actor is a warden or other authorized official of a correctional institution, and:
 - (a) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and
 - (b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and
 - (c) If deadly force is used, its use is otherwise justifiable under this chapter.
- (6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at the direction of the person responsible for the safety of a vessel or an aircraft, and:
 - (a) The actor believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless the actor's belief in the lawfulness of the order is erroneous and the actor's error is due to ignorance or mistake as to the law defining authority; and
 - (b) If deadly force is used, its use is otherwise justifiable under this chapter.
- (7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier, or in a place where others are assembled, and:
 - (a) The actor believes that the force used is necessary for that purpose; and
 - (b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 95

H.B. NO. 526

A Bill for an Act Relating to Child Support Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 576D-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§576D-10.5 Liens. (a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor’s real and personal property and the obligor’s real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or ~~[order]~~ notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(b) Whenever the dependents of the obligor receive public assistance monies, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding. Upon the establishment of the public assistance debt, ~~[it shall be subject to collection action, and the real and personal property of the obligor shall be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver.]~~ a lien shall arise on the obligor’s real and personal property and the obligor’s real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(c) ~~[The child support]~~ Every order or judgment regarding child support or public assistance debt filed [through] in judicial or administrative proceedings in this State [or any other state] shall be recorded in the bureau of conveyances. [The recordation of the order or judgment in the bureau of conveyances] This recorded lien shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The statutory lien [shall become] becomes effective when it arises under [subsections] subsection (a) or (b) and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(d) No fee shall be charged the child support enforcement agency or its designated counsel for recording or filing of the liens provided for in this section or for the recording or filing of any releases requested in conjunction with the liens.

(e) ~~[Any]~~ A recorded order or judgment regarding child support or public assistance debt becomes effective and takes priority from the time it is recorded or the time the child support obligation described therein becomes delinquent, whichever is later. A statutory lien that is provided for by and becomes effective under this section shall take priority over any [lien subsequently acquired or recorded except tax liens.] unrecorded lien whenever acquired, except tax liens previously acquired.

(f) ~~[The]~~ A lien shall be enforceable by the child support enforcement agency or its designated counsel or by the obligee [by] in the following manner:

- (1) By suit in the appropriate court [or by];
- (2) By bringing an action in an administrative tribunal [or shall be enforceable as a claim against the estate of the obligor or by];
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

A notice of child support lien shall state the name and social security number (if available) of the obligor, the child support enforcement case number, the amount of the lien and the through date (if applicable), the accruing monthly amount, and the date on which the order or judgment regarding child support or public assistance debt was recorded with the bureau of conveyances. The notice shall require that whoever is served with a notice of child support lien either satisfy the lien or obtain a release of the lien prior to disbursing any funds to the obligor. The method of service of a notice of child support lien shall be by certified mail, return receipt requested, or

by personal delivery to the individual or entity referred to. A copy of the notice of child support lien shall also be sent to the obligor by regular mail at the obligor's last known address. Upon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the child support enforcement agency. A notice of child support lien may be amended from time to time until extinguished or released, each amendment taking effect upon proper service. A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

(g) A lien shall be enforceable by the child support enforcement agency or its designated counsel without the necessity of obtaining a court order in the following manner:

- (1) By intercepting or seizing periodic or lump-sum payments from:
 - (A) A state or local agency, including unemployment compensation, and other benefits; and
 - (B) Judgments, settlements, and lotteries;provided that unemployment compensation benefits may be intercepted only to the extent authorized by section 303(e) of the Social Security Act;
- (2) By attaching and seizing assets of the obligor held in financial institutions;
- (3) By attaching public and private retirement funds; and
- (4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

These procedures shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

[(g)] (h) The child support enforcement agency, its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor.

(i) If there is a dispute between the obligor and the child support enforcement agency concerning the amount of the child support lien, the obligor may request in writing an account review. Upon receipt of a written request, the child support enforcement agency shall conduct a review of the obligor's account balance pursuant to its administrative rules.

(j) Any person or entity failing to satisfy a notice of child support lien as required by this section, even though able to do so, shall be personally liable to the child support enforcement agency or the obligee for the full amount of all sums required to be withheld and delivered."

SECTION 2. Section 576D-13, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section. The appropriate licensing authority shall require that the social security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application for those licenses. The social security number shall be used solely for purposes of this chapter for child support enforcement and identification."

SECTION 3. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before ~~[October 1, 1996,]~~ January 1, 1994, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.”

SECTION 4. Section 576D-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The financial institution shall provide to the agency, on a quarterly basis, the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past due support, as identified by the agency by name and social security number or other taxpayer identification number. The information provided by the financial institution shall also include the name and last known address of all account holders of any account reported under this section.”

SECTION 5. Section 576E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[Service]~~ In any proceeding to establish a child support order, in cases where the agency is not yet enforcing an order of support for the subject child, service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party’s last known address.”

SECTION 6. Section 576E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In any child support enforcement ~~[proceedings]~~ proceeding subsequent to an order~~[,]~~ already being enforced by the agency, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6.”

SECTION 7. Section 576E-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Proceedings for review shall be instituted in the family court of the circuit where the ~~[appellant resides]~~ final decision and order was filed within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the hearings officer or agency. The filing of a notice of appeal shall not stay enforcement of the administrative order.”

SECTION 8. Section 584-3.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To expedite the establishment of paternity, each public and private birthing hospital or center and the department of health shall provide unwed parents the opportunity to voluntarily acknowledge the paternity of a child during the period immediately prior to or following the child’s birth. The voluntary acknowledgment of paternity shall be in writing and shall consist of a single form signed under oath by both the natural mother and the natural father and signed by a witness. The voluntary acknowledgment of paternity form shall include the Social Security number of each parent. Prior to the signing of the voluntary acknowledgment of paternity form, designated staff members of such facilities shall provide to both the mother and the alleged father, if he is present at the facility:

- (1) Written materials regarding paternity establishment;
- (2) Forms necessary to voluntarily acknowledge paternity; and
- (3) Oral, video, or audio, and written descriptions of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity, including, if one parent is a minor, any right afforded due to minority status.

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information to the parents regarding paternity establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of paternity containing the Social Security numbers, if available, of both parents, with the information required by the department of health so that the birth certificate issued includes the name of the legal father of the child, which shall be promptly recorded by the department of health.”

SECTION 9. Statutory material to be repealed is stricken and bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 96

H.B. NO. 531

A Bill for an Act Relating to Nonconsensual Common Law Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 507D-5, Hawaii Revised Statutes, is amended to read as follows:

“**§507D-5 [Liens against public officers and employees.] Requirement of certified court order.** (a) Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer’s or employee’s duties shall designate in the pleading header that the claim is directed to a federal, state, or county officer or employee, and shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of such lien.

(b) Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified order from a state or

federal court of competent jurisdiction authorizing the filing of nonconsensual common law lien.

~~[(b)]~~ (c) The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien.”

SECTION 2. Section 507D-6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§]507D-6~~ Filing a notice of invalid lien. (a) If a claim of lien [as described in] not in conformity with section [507D-5] 507D-5(a) has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee, or the attorney representing the state or county department, agency, board, authority, or commission of which the individual is an officer or employee. A copy of the notice of invalid lien shall be mailed by the government attorney to the lien claimant at his or her last known address.

(b) If a claim of nonconsensual common law lien not in conformity with section 507D-5(b) has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the party in interest.

(c) The registrar or registrar’s assistants shall not be liable for accepting for filing either a claim of lien as described in section 507D-5 or a notice of invalid lien pursuant to this section.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 97

H.B. NO. 533

A Bill for an Act Relating to Antitrust.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the vigorous enforcement of the antitrust laws is crucial to promote competition that benefits both businesses and consumers and the overall welfare of the State of Hawaii.

The legislature further finds that the establishment of the antitrust trust fund to support the enforcement of antitrust laws will yield direct benefits to the public and protect the health, safety, and welfare of the people of the State of Hawaii.

The legislature also finds that the moneys deposited into the antitrust trust fund should be deemed trust moneys to be used for the enforcement of antitrust laws by the department of the attorney general.

SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§28- **Antitrust trust fund.** (a) There is established in the state treasury the antitrust trust fund, into which shall be deposited:

- (1) Ten per cent of any antitrust judgment or settlement received by the State except where the deposit is inconsistent with the court order or settlement agreement relating to the amount; and

- (2) Appropriations made by the legislature.

(b) The antitrust trust fund shall be administered by the department of the attorney general and shall be used for expenditures relating to the enforcement of antitrust laws, including but not limited to expenditures for training, equipment purchases, educational resources, and facilitating participation in antitrust lawsuits and investigations initiated by other states.

(c) All unencumbered and unexpended moneys in excess of \$250,000 remaining on balance in the antitrust trust fund at the close of June 30 of each year shall lapse to the credit of the general fund.

(d) The department of the attorney general shall submit a report to the legislature no later than twenty days prior to the convening of each regular session to provide an accounting of the receipts and expenditures of the fund.”

SECTION 3. Of the general fund appropriation for fiscal year 2000-2001 for the department of the attorney general (ATG 100), the department shall deposit not more than \$150,000 for fiscal year 2000-2001 to the credit of the antitrust trust fund to be expended by the department of the attorney general for the purposes of the fund.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on June 29, 2001.

(Approved May 18, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 98

H.B. NO. 543

A Bill for an Act Relating to Homeless Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to eliminate the requirement that the housing and community development corporation of Hawaii conduct an independent compliance audit of homeless program service providers who have contracts with the State and, instead, to require that these providers submit annual financial audits and reports that account for funds received under state homeless programs contracts.

SECTION 2. Section 201G-461, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§201G-461]]~~ **Annual [program] performance audits.** (a) The corporation shall ~~[ensure that a compliance audit by an independent auditing agency is carried out expeditiously at least once each fiscal biennium period for]~~ require any provider agency [which] that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part[-] to submit to the corporation a financial audit and report on an annual basis conducted by a

certified public accounting firm. This audit and report shall contain information specific to the funds received under state homeless programs contracts. The audit shall include recommendations to address any problems found.

~~[(b) Copies of each audit shall be submitted to the corporation, the director of finance, the president of the senate, and the speaker of the house of representatives.~~

(e) (b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall [contain a requirement] require that the provider agency [shall] address the recommendations made by the auditing agency, subject to exceptions as set by the corporation.

~~[(d) (c) Failure to carry out the recommendations made by the auditing agency may be grounds for the corporation to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 99

H.B. NO. 544

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to continue the housing and community development of Hawaii’s three-year buyback provision until December 31, 2004, at which time the buyback returns to ten years.

SECTION 2. Section 201G-127, Hawaii Revised Statutes, is amended by amending subsections (a) and (b)¹ to read as follows:

“(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ~~[ten]~~ three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
 - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
 - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year.
- (2) The corporation may purchase the real property either:
 - (A) By conveyance free and clear of all mortgages and liens; or
 - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the

manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The corporation's interest created by this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property, within ~~[ten]~~ three years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).
- (4) After the end of the ~~[tenth]~~ third year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
 - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
 - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under section 201G-125 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
 - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under paragraphs (1) and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable; and

(5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201G-112, and upon the terms that preserve the intent of this section and sections 201G-129 and 201G-130, and in accordance with rules adopted by the corporation."

SECTION 3. Section 201G-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ~~[ten-year]~~ three-year restriction period set forth in section 201G-127, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ~~[ten]~~ three years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ~~[ten-year]~~ owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201G-127. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001; provided that on December 31, 2004, the amendments in sections 2 and 3 of this Act shall be repealed and sections 201G-127(a) and (b) and 201G-129(a), Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this

ACT 100

Act.

(Approved May 18, 2001.)

Note

1. So in original.

ACT 100

H.B. NO. 550

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the housing and community development corporation of Hawaii, in coordination with the respective counties, to establish the affordable housing requirements for undeveloped parcels in the villages of Kapolei, Oahu; villages of Leiali'i, Maui; and villages of La'i'opua, Hawaii, irrespective of any other law, rule, or ordinance to the contrary.

SECTION 2. Notwithstanding Act 15, Session Laws of Hawaii 1988, the affordable housing requirements for the undeveloped parcels in the villages of Kapolei, Oahu, villages of Leiali'i, Maui, and villages of La'i'opua, Hawaii, shall be established by agreement between the housing and community development corporation of Hawaii and the respective counties.

The undeveloped parcels are further defined as follows:

Villages of Kapolei: Tax map key numbers 9-1-16:35, 36, 37, 38, 39, 58, 59, 64, 76, 82, 88, 90, 93; 9-1-79:1 through 35, 54, 129 through 134; 9-1-92:37 through 66, 104; 9-1-104:1 through 88; and 9-1-105:1 through 117.

Villages of Leiali'i: Tax map key numbers 4-5-21:3, por. 4, 18, 19, por. 20, por. 21, por.22; and 4-5-36:1 through 14, 55, through 61, 69 through 104.

Villages of La'i'opua: Tax map key numbers 7-4-21:1 through 18 and 7-4-20:1 through 7.

SECTION 3. The affordable housing ratio imposed by Act 15, Session Laws of Hawaii 1988, is waived for the undeveloped parcels, irrespective of whether the state land use commission modifies any existing decision and order affecting the undeveloped parcels as defined in section 2.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 101

H.B. NO. 564

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

~~“§88-281 [Eligibility for retirement allowance.] Service retirement.~~ (a)

A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service who has attained the age of fifty-five, shall

become eligible to receive a [normal] retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer, of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a [normal] retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to ~~[apply for]~~ receive a [normal] retirement allowance [payable beginning with the month] when the member has attained age sixty-five.

(e) A member may retire upon the written application to the board specifying the desired date of retirement, which shall be not less than thirty days nor more than ninety days subsequent to the date of filing. If the member dies after the date of filing the application to retire, but prior to the effective date of retirement, the member's designated beneficiary may receive the member's retirement benefits, which shall be computed as though the member had died on the effective date of retirement under the mode of retirement selected."

SECTION 2. Section 88-282, Hawaii Revised Statutes, is amended to read as follows:

"§88-282 [Amount of] Service retirement allowance. ~~[(a) The amount of the annual normal retirement allowance payable to a retired member shall be one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service.~~

~~(b) The amount of the annual early retirement allowance payable to a retired member shall be equal to the annual normal retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement.] Upon retirement from service, a member shall receive a retirement allowance as follows:~~

- ~~(1) If the member has met the requirements in section 88-281(a), (b), or (d) a maximum retirement allowance of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service; or~~
- ~~(2) If the member has met the requirements in section 88-281(c), an early retirement allowance equal to the maximum retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement."~~

SECTION 3. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

"§88-283 Retirement allowance options. (a) ~~[A] In lieu of the maximum retirement allowance described in sections 88-282, 88-284, and 88-285, a member may elect to [have] receive the member's [normal, early, or disability] retirement allowance [paid] under one of the [following] options described below, which shall be actuarially equivalent [amounts:] to the maximum retirement allowance:~~

- ~~(1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of the allowance, including fifty per cent of all cumulative post retirement allowances, to the member's beneficiary~~

designated by the member at the time of retirement, for the life of the beneficiary;

- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; or
 - (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary for the balance of the ten-year period.
- (b) Any election of a mode of retirement shall be irrevocable."

SECTION 4. Section 88-284, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A member who is determined to be permanently incapacitated for the further performance of duty pursuant to subsection (a) and eligible to receive an ordinary disability retirement allowance shall receive [an ordinary disability] a maximum retirement allowance [equal to the member's accrued normal retirement allowance] of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service unreduced for age."

SECTION 5. Section 88-285, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§88-285]]~~ **Service connected disability[-] retirement.** A member who would be eligible to receive a service connected disability retirement allowance pursuant to section 88-79 shall receive a maximum retirement allowance ~~[equal to the member's accrued normal retirement allowance]~~ of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service un

SECTION 6. Section 88-286, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

- "(b) In the case of ordinary death, the death benefit shall be as follows:
- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member's accrued ~~[normal]~~ maximum retirement allowance un
 - (2) For the surviving spouse ~~[[~~ or reciprocal beneficiary~~]]~~, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option B of section 88-283; and
 - (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child shall receive an allowance equal to twenty per cent of the

member's accrued [~~normal~~] maximum retirement allowance unreduced for age, payable until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued [~~normal~~] maximum retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

- (c) In the case of accidental death, the death benefit shall be as follows:
 - (1) For the surviving spouse[;] or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage[;], marriage, or upon entry into a new reciprocal beneficiary relationship;
 - (2) If there is a surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
 - (A) Ten per cent of the member's accrued [~~normal~~] maximum retirement allowance[;] unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued [~~normal~~] maximum retirement allowance unreduced for age; or
 - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to the greater of:
 - (A) Twenty per cent of the member's accrued [~~normal~~] maximum retirement allowance[;] unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued [~~normal~~] maximum retirement allowance unreduced for age; or
 - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-6, Hawaii Revised Statutes, is amended to read as follows:

“§88-6 Payment of retirement benefits. Notwithstanding any other provision of this chapter~~[-, all]~~:

- (1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly~~[-]; and~~
- (2) Any retiree or beneficiary whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their semimonthly retirement benefit. This method of payment may be waived by the system if another method is determined to be more appropriate.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

A Bill for an Act Relating to Unclaimed Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 523A-3.5, Hawaii Revised Statutes, is amended to read as follows:

“§523A-3.5 Escheat process. (a) Any property in custody of the State pursuant to this chapter at the close of a fiscal year ending June 30, shall escheat to the State as follows:

- (1) If the value of the property is greater than \$10,000, the property shall escheat six years after the end of the fiscal year in which the property was paid or delivered to the director;
- (2) If the value of the property is greater than \$5,000 but less than or equal to \$10,000, the property shall escheat five years after the end of the fiscal year in which the property was paid or delivered to the director;
- (3) If the value of the property is greater than \$1,000 but less than or equal to \$5,000, the property shall escheat four years after the end of the fiscal year in which the property was paid or delivered to the director;
- (4) If the value of the property is greater than \$100 but less than or equal to \$1,000, the property shall escheat three years after the end of the fiscal year in which the property was paid or delivered to the director; and
- (5) If the value of the property is less than or equal to \$100, the property shall escheat two years after the end of the fiscal year in which the property was paid or delivered to the director;

provided that the property for which a timely claim has been filed with the director pursuant to section 523A-24, or a timely action has been filed pursuant to section 523A-26, shall not escheat until the disposition of the claim or action.

(b) The director shall cause notice to be given no later than April 1 of the fiscal year ending June 30 in which the property shall escheat to the State at least once statewide.

(c) The notice shall be entitled, "Notice to Declare Certain Abandoned Property Escheated to the State of Hawaii" and contain:

- (1) A statement that any property presumed abandoned and paid or delivered to the director that remains unclaimed as of June 30 of the year the notice is given and that meets the escheat criteria established in subsection (a)(1), (2), (3), (4), or (5) shall escheat to the State on June 30, and all rights, title, or interest of the owner shall be terminated and all claims of the owner shall be forever barred;
 - (2) A statement listing the names of owners of abandoned property with a value greater than \$5,000 scheduled to escheat to the State; and
 - (3) A statement identifying the location where a list of names and last known addresses, if any, of persons appearing to be owners of abandoned property subject to escheat on June 30 of the year the notice is given; and stating that this list shall be made available as a government record.
- (d) This section shall not apply to sums payable on:
- (1) Travelers checks, money orders, and other written instruments presumed abandoned under section 523A-4; [or]
 - (2) Checks, drafts, or similar instruments on which a banking or financial organization is directly liable, including a cashier's check and a certified check presumed abandoned under section 523A-5[.]; and
 - (3) Unpaid debt service payments on Hawaii State and county bonds."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 104

H.B. NO. 576

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~"(b) The actuarial valuations made for years [ending June 30, 1996, to June 30, 2000,] after June 30, 1999, shall be based on an eight per cent investment yield rate, [a variable salary growth assumption rate,] assumed salary increases of four per cent, and tables and factors adopted by the board or legislature for actuarial valuations of the system, subject to recommendations made by the actuary appointed under section [88-30,] 88-29. [The salary growth assumption used in each annual actuarial valuation shall be determined separately for each of the following groups:~~

- ~~(1) Teachers;~~
- ~~(2) Police officers, firefighters, and corrections officers; and~~

(3) All other employees.

~~For paragraphs (1), (2), and (3), the salary growth assumption shall be the arithmetic average of the compensation increases experienced by continuing active members, as measured in the data received for the valuation being performed and the two immediately preceding valuations.]”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

ACT 105

H.B. NO. 599

A Bill for an Act Relating to Nonprofit Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII NONPROFIT CORPORATIONS ACT
PART I. GENERAL PROVISIONS**

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Nonprofit Corporations Act”.

§ -2 **Reservation of power to amend or repeal.** The Hawaii legislature has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

§ -3 **Filing requirements.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the department director.

(b) This chapter must require or permit filing of the document with the department director.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of good standing required of foreign corporations need not be in English if accompanied by an English translation under oath of the translator.

(f) The document must be executed:

(1) By the presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but need not contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary; or
- (3) An acknowledgment, verification, or proof.

(h) If the department director has prescribed a mandatory form for a document under section -4, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the department director for filing and must be accompanied by one exact or conformed copy (except as provided in sections -73 and -279), the correct filing fee, and any license fee or penalty required by this chapter or other law.

§ -4 Forms. (a) The department director may prescribe and furnish on request, forms for:

- (1) An application for a certificate of good standing;
- (2) A foreign corporation's application for a certificate of authority to transact business in this State;
- (3) A foreign corporation's application for a certificate of withdrawal; and
- (4) The annual report.

If the department director so requires, use of these forms is mandatory.

(b) The department director may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

§ -5 Filing, service, and copying fees. The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$20;
- (3) Restated articles of incorporation, \$20;
- (4) Articles of merger or consolidation, \$100;
- (5) Articles of conversion, \$200;
- (6) Articles of dissolution, \$20;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$20;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$20;
- (11) Reservation of corporate name, \$20;
- (12) Transfer of reservation of corporate name, \$20;
- (13) Good standing certificate, \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, \$50;
- (15) Special handling fee for review of articles of conversion, merger, or consolidation, \$150;
- (16) Special handling fee for certificates issued by the department, \$25 per certificate;
- (17) Special handling fee for certification of documents, \$25; and
- (18) Agent's statement of change of registered office, \$20 for each affected domestic corporation or foreign corporation; provided that if more than

two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation.

§ -6 Effective time and date of document. (a) Except as provided in subsection (b), a document is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the department director's endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

§ -7 Correcting filed document. (a) A domestic or foreign corporation may correct a document filed by the department director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by:

- (1) Preparing articles of correction that:
 - (A) Describe the document (including its filing date) or attach a copy of it to the articles;
 - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Correct the incorrect statement or defective execution; and
- (2) Delivering the articles of correction to the department director.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

§ -8 Filing duty of the department director. (a) If a document delivered to the office of the department director for filing satisfies the requirements of section -3, the department director shall file it.

(b) The department director files a document by stamping or otherwise endorsing it with the date and the time of receipt.

(c) If the department director refuses to file a document, the department director shall return it to the domestic or foreign corporation, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The department director's duty to file documents under this section is ministerial. The department director's filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ -9 Appeal from the department director's refusal to file document.

(a) If the department director refuses to file a document delivered for filing to the department director's office, the domestic or foreign corporation may within thirty days after the return of the document appeal the refusal to the circuit court. The appeal shall be commenced by petitioning the court to compel filing the document

and by attaching to the petition the document and the department director's explanation of the refusal to file.

(b) The court may summarily order the department director to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

§ -10 Evidentiary effect of copy of filed document. A certificate attached to a copy of a document bearing the department director's signature (which may be in facsimile) and the seal of the department is conclusive evidence that the original document is on file with the department director.

§ -11 Certificate of good standing. (a) Any person may apply to the department director to obtain a certificate of good standing for a domestic or foreign corporation.

(b) The certificate of good standing shall set forth:

- (1) The domestic corporation's corporate name, or the foreign corporation's corporate name used in this State;
- (2) That the domestic corporation is duly incorporated under the laws of this State, the date of its incorporation, and the period of its duration if less than perpetual, or that the foreign corporation is authorized to transact business in this State;
- (3) That all fees, taxes, and penalties owed to the State have been paid, if payment is reflected in the records of the department director and nonpayment affects the good standing of the domestic or foreign corporation;
- (4) That its most recent annual report required by section -308 has been delivered to the department director;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the office of the department director that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of good standing issued by the department director may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this State.

§ -12 Penalty for signing false document. (a) A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the department director for filing.

(b) An offense under this section is a class C felony.

§ -13 Department director; powers. The department director has the power reasonably necessary to perform the duties required of the department director's office by this chapter. The department director shall adopt necessary rules pursuant to chapter 91.

§ -14 Definitions. Unless the context otherwise requires in this chapter: "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

“Articles of incorporation” or “articles” includes amended and restated articles of incorporation, and articles of merger.

“Board” or “board of directors” means the board of directors of a corporation except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section -131.

“Bylaws” means the code or codes of rules (other than the articles) adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

“Class” refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this chapter, rights shall be considered the same if they are determined by a formula applied uniformly.

“Code” means the federal Internal Revenue Code of 1986, as amended.

“Delegates” means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

“Deliver” includes mail.

“Department director” means the director of the department of commerce and consumer affairs, unless the context otherwise requires.

“Directors” means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title, to act as members of the board.

“Distribution” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

“Domestic corporation” means a corporation organized under the laws of this State.

“Employee” does not include an officer or director who is not otherwise employed by the corporation.

“Entity” includes domestic and foreign corporations; domestic professional corporations; domestic and foreign limited liability companies; domestic and foreign not-for-profit corporations; domestic and foreign business trusts; estates; domestic and foreign partnerships; domestic and foreign limited partnerships; domestic and foreign limited liability partnerships; trusts; and two or more persons having a joint or common economic interest; and state, federal, and foreign governments.

“File”, “filed”, or “filing” means filed in the office of the department director.

“Foreign corporation” means a corporation organized under a law other than the law of this State.

“Governmental subdivision” includes authority, county, district, and municipality.

“Includes” denotes a partial definition.

“Individual” means a natural person or the estate of an incompetent or deceased individual.

“Means” denotes a complete definition.

“Member” means (without regard to what a person is called in the articles or bylaws) any person or persons having the rights and obligations of membership pursuant to a corporation’s articles of incorporation or bylaws.

“Membership” refers to the rights and obligations a member or members have pursuant to a corporation’s articles, bylaws, and this chapter.

“Notice” is defined in section -15.

“Person” includes any individual or entity.

“Principal office” means the office (in or out of the State) so designated in the annual report where the principal offices of a domestic or foreign corporation are located.

“Proceeding” includes civil suit and criminal, administrative, and investigatory action.

“Record date” means the date established under part VI or part VII on which a corporation determines the identity of its members for the purposes of this chapter.

“Secretary” means the corporate officer to whom the board of directors has delegated responsibility under section -153(b) for preparing the minutes of the directors’ and members’ meetings and for authenticating the records of the corporation.

“State” when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

“United States” includes district, authority, bureau, commission, department, and any other agency of the United States.

“Vote” includes authorization by written ballot and written consent.

“Voting power” means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

§ -15 Notice. (a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with first class postage affixed;
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;
- (4) Thirty days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with other than first class, registered, or certified postage affixed.

(e) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member’s last known address shown in the corporation’s current list of members.

(f) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member’s last known address shown in the corporation’s current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation’s current list of

members, if addressed or delivered to one of the members, at the last known address appearing on the current list of members.

(g) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in the State), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(h) If section -105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

§ -16 Private foundations. Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Code:

- (1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code;
- (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code;
- (3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code;
- (4) Shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the Code;
- (5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code.

§ -17 Judicial relief. (a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, or member, the court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or

vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

PART II. ORGANIZATION

§ -31 **Incorporators.** One or more individuals may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the department director for filing.

§ -32 **Articles of incorporation.** (a) The articles of incorporation must set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section -61;
- (2) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;
- (3) The name and address of each incorporator;
- (4) Whether or not the corporation will have members; and
- (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
 - (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation;
 - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and
 - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
 - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
 - (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of any such director's duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
 - (A) For any breach of the director's duty of loyalty to the corporation or its members;
 - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 - (C) For any transaction from which a director derived an improper personal economic benefit; or
 - (D) Under sections -150 to -152.

(c) None of the provisions specified in this section shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(d) Each incorporator named in the articles must sign the articles.

(e) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

§ **-33 Incorporation.** (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed with the department director.

(b) The department director's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

§ **-34 Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

§ **-35 Organization of corporation.** (a) After incorporation:

- (1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
- (2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:
 - (A) Directors and complete the organization of the corporation; or
 - (B) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of the State in accordance with section -143.

§ **-36 Bylaws.** (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

§ **-37 Emergency bylaws and powers.** (a) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

- (1) How to call a meeting of the board;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

PART III. PURPOSES AND POWERS

§ -51 **Purposes.** (a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

§ -52 **General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the State, for regulating and managing the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity;
- (7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section -151;
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State;
- (11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes, and for other purposes that further the corporate interest;

- (14) To impose dues, assessments, admission, and transfer fees upon its members;
- (15) To establish conditions for admission of members, admit members, and issue memberships;
- (16) To carry on a business;
- (17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

§ **-53 Emergency powers.** (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

- (1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

§ **-54 Ultra vires.** (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative.

PART IV. NAMES

§ **-61 Corporate name.** (a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section -51 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the department director from:

- (1) The name of any entity registered or authorized to transact business or conduct affairs under the laws of this State;

- (2) A corporate name reserved or registered under section -62, -63, or 414-51, the exclusive right to which is reserved at the time in this State;
- (3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this State because its real name is unavailable; or
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A corporation may apply to the department director for authorization to use a name that is not distinguishable based upon the department director's records from one or more of the names described in subsection (b). The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing, and one or more words are added to make the name distinguishable upon the records of the department director from the name of the applying corporation; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this State if the other corporation is incorporated or authorized to do business in this State and the proposed user corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

§ -62 Reserved name. (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the department director for filing. Upon finding that the corporate name applied for is available, the department director shall reserve the name for the applicant's exclusive use for a one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the department director a signed notice of the transfer that states the name and address of the transferee.

§ -63 Registered name. (a) A foreign corporation may register its corporate name, or its corporate name with any change required by section -276, if the name is distinguishable upon the records of the department director from:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this State; the name of a limited partnership or limited liability partnership existing under the laws of this State or authorized to transact business in this State; and
- (2) A corporate name reserved under section -62 or 415-9, or registered under this section.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section -276, by delivering to the department director an application:

- (1) Setting forth its corporate name, or its corporate name with any change required by section -276, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of good standing (or a document of similar import) from the state or country of incorporation.

(c) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive one-year periods by delivering to the department director for filing a renewal application, which complies with the requirements of subsection (b), between October first and December thirty-first of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated, or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

§ -64 Administrative order of abatement for infringement of corporate name. (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of another entity registered or authorized to transact business under the laws of this State is substantially identical to, or confusingly similar with its name, may file a petition with the department director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name but require the entity to register a new trade name with the department director under which the entity shall conduct business in this State; or
- (2) Require the entity to change its registered name, register a new name with the department director, and require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapters 414, 415A, 425, 425D, and 428, as applicable.

(c) Any person aggrieved by the department director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the department director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602.

PART V. OFFICE AND REGISTERED AGENT

§ -71 Registered office and registered agent. (a) Except as provided in subsection (b), each corporation shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic entity whose business office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.

(b) A corporation may, but shall not be required to, maintain a registered office and a registered agent in this State during the time the corporation has at least one officer or director who is a resident of the State.

§ -72 Designation or change of registered office or registered agent.

(a) A corporation that does not already have a registered office and registered agent may designate its registered office and registered agent by delivering to the department director for filing a statement of designation that sets forth:

- (1) The name of the corporation;
- (2) The street address of its registered office;
- (3) The name of its registered agent; and
- (4) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) A corporation may change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its new registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(c) If the street address of a registered agent's office is changed, the corporation's registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ -73 Resignation of registered agent. (a) A registered agent may resign as registered agent by signing and delivering to the department director for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) A registered agent shall mail one copy to the registered office (if not discontinued) and a second copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement is filed.

§ -74 Service on corporation. (a) A corporation's registered agent shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office shown in the most recent annual report filed pursuant to section -308. Service shall be perfected under this subsection on the earliest of:

- (1) The date the corporation receives the notice via mail service;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

PART VI. MEMBERS AND MEMBERSHIPS

§ **-81 Admission.** (a) The articles or bylaws may establish criteria or procedures for the admission of members.

(b) No person shall be admitted as a member without the person's consent.

§ **-82 Consideration.** Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

§ **-83 No requirement of members.** A corporation is not required to have members.

§ **-84 Differences in rights and obligations of members.** (a) All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer; unless the articles or bylaws establish classes of membership with different rights or obligations.

(b) All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

§ **-85 Member's liability to third parties.** A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

§ **-86 Member's liability for dues, assessments, and fees.** A member may be liable to the corporation for dues, assessments, or fees; provided that the articles or bylaws or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, by itself, create liability.

§ **-87 Creditor's action against member.** (a) No action may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation, and execution has been returned unsatisfied in whole or in part or unless such action would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's action brought under subsection (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the action.

§ **-88 Resignation.** (a) A member may resign at any time.

(b) The resignation of a member shall not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to the resignation.

§ -89 Termination, expulsion, and suspension. (a) No member may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable, and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) The articles or bylaws set forth a procedure that provides:

(A) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail shall be given by first class or certified mail sent to the last known address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall commence within one year after the effective date of the expulsion, suspension, or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.

§ -90 Derivative suits. (a) A proceeding may be brought on behalf of a domestic or foreign corporation to procure a judgment in its favor by any member or members having five per cent or more of the voting power, or by fifty members, whichever is less, or any director.

(b) In any such proceeding, each complainant shall be a member or director at the time the proceeding is initiated.

(c) A complaint in a proceeding brought on behalf of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the directors, and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(d) On termination of the proceeding, the court may require the complainants to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise is successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the court may award the complainants reasonable expenses (including counsel fees).

§ -91 Delegates. (a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:

- (1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;
- (2) Calling, noticing, holding, and conducting meetings of delegates; and
- (3) Carrying on corporate activities during and between meetings of delegates.

PART VII. MEMBERS' MEETINGS, AND VOTING

§ -101 **Annual and regular meetings.** (a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

- (1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and
- (2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of sections -105 and -111.

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections -105 and -111.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

§ -102 **Special meetings.** (a) A corporation with members shall hold a special meeting of members:

- (1) On call of its board, or the person or persons authorized to do so by the articles or bylaws; or
- (2) If the holders of at least five per cent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer shall be the record date for the purpose of determining whether the five per cent requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to section -105 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section -105.

(d) Special meetings of members may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section -105 may be conducted at a special meeting of members.

§ -103 Court-ordered meetings. (a) The court of the county where a corporation's principal office (or, if none in this State, its registered office) is located may summarily order a meeting to be held:

- (1) On application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting;
- (2) On application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty days after the date it was required to be held; or
- (3) On application of a member or members entitled to call a special meeting, who signed a demand for a special meeting valid under section -102.

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) The court may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order in the event of a court-ordered meeting.

§ -104 Action by written consent. (a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty per cent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty per cent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under section -103 or -107, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the director.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after the written notice is given.

§ -105 Notice of meeting. (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided that notice of matters referred to in subsection (c)(2) shall be given as provided in subsection (c).

(c) Notice is fair and reasonable if:

- (1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten (or if notice is mailed by other than first class or registered mail, thirty) nor more than sixty days before the meeting date;
- (2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under sec-

tions -150, -164, -182, -202, -222, -241, and -242; and

- (3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section -107; however, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

- (1) Requested in writing to do so by a person entitled to call a special meeting; and
- (2) The request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

§ -106 Waiver of notice. (a) A member may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

- (1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
- (2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

§ -107 Record date; determining members entitled to notice and vote.

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

§ -108 Action by written ballot. (a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of directors, and specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

§ -109 Members' list for meeting. (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, beginning two business days after notice of the meeting for which the list was prepared is given, and continuing through the meeting. A member, or a member's agent, or member's attorney is entitled on written demand to inspect and, subject to the limitations of sections -302(c) and -305, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting; provided that a request for the list is submitted no fewer than five business days prior to the scheduled date of the meeting. Any member, member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where a corporation's principal office (or if none in this State, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section shall not affect the validity of action taken at the meeting.

§ -110 Voting entitlement generally. (a) The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

- (1) If only one votes, the act binds all; and
- (2) If more than one votes, the vote shall be divided on a pro rata basis.

§ -111 Quorum requirements. (a) Unless this chapter, the articles, or the bylaws provide for a higher or lower quorum, ten per cent of the votes entitled to be cast on a matter shall be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaws amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaws amendment to increase the quorum required for any member action shall be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

§ -112 Voting requirements. (a) Unless this chapter, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaws amendment to increase or decrease the vote required for any member action shall be approved by the members.

§ -113 Proxies. (a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact. A member may authorize another person to act as a proxy for the member by:

- (1) Executing a writing authorizing another person or persons to act as a proxy for the member, which may be accomplished by the member or the member's authorized attorney-in-fact, officer, director, employee, or agent signing the writing or causing the member's signature to be affixed to the writing by any reasonable means, including without limitation the use of a facsimile signature; or

- (2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission authorizing the person or persons to act as a proxy for the member to the person or persons who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the member. A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form; provided that no proxy shall be valid for more than three years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

- (1) Attending any meeting and voting in person; or
- (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to section -116 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

§ -114 Cumulative voting for directors. (a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless the meeting notice or statement accompanying the notice states that cumulative voting will take place or a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section -138 are met unless the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members may not cumulatively vote if the directors and members are identical.

§ -115 **Other methods of electing directors.** A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method.

§ -116 **Corporation's acceptance of votes.** (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and to give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) Two or more persons hold the membership as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-holders and the person signing appears to be acting on behalf of all the co-holders;
- (4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; and
- (5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ -117 **Voting agreements.** (a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. The agreements may be valid for a period of up to ten years.

(b) A voting agreement created under this section is specifically enforceable.

PART VIII. DIRECTORS AND OFFICERS

§ -131 Requirement for and duties of the board. (a) Each corporation shall have a board of directors.

(b) Except as provided in this chapter or subsection (c), all corporate powers shall be exercised by or under the authority of its board including the management of the corporation's affairs.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

§ -132 Qualifications of directors. All directors shall be individuals. A director need not be a resident of this State or a member of the corporation unless required by the articles of incorporation or the bylaws. The articles or bylaws may prescribe other qualifications for directors.

§ -133 Number of directors. (a) A board of directors shall consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws.

§ -134 Election, designation, and appointment of directors. (a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated representative.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

§ -135 Terms of directors generally. (a) The articles or bylaws shall specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

- (1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
- (2) The term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

§ -136 **Staggered terms for directors.** The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

§ -137 **Resignation of directors.** (a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, or to the president or secretary.

(b) A resignation is effective when the notice is effective, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

§ -138 **Removal of directors elected by members or directors.** (a) The members may remove one or more directors elected by them without cause unless otherwise provided in the articles or bylaws.

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) to (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) to (e).

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; provided that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

§ -139 **Removal of designated or appointed directors.** (a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

(c) The person removing the director shall do so by giving written notice of the removal to the director, and either the presiding officer of the board or the corporation's president or secretary.

(d) A removal is effective when the notice is effective unless the notice specifies a future effective date.

§ -140 Removal of directors by judicial proceeding. (a) The circuit court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its members holding at least ten per cent of the voting power of any class, if the court finds that with respect to the corporation, the director's removal is in the best interest of the corporation due to:

- (1) The director's fraudulent or dishonest conduct;
- (2) The director's gross abuse of authority or discretion; or
- (3) A final judgment finding that the director has violated a duty set forth in sections -149 and -152, and that removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a), the corporation shall be made a party defendant.

§ -141 Vacancy on board. (a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) The members, if any, may fill the vacancy; if the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;
- (2) The board of directors may fill the vacancy; or
- (3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under section -137(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§ -142 Compensation of directors. Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

§ -143 Regular and special meetings. (a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this State.

(c) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors

participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§ -144 Action without meeting. (a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

§ -145 Call and notice of meetings. (a) Unless the articles, bylaws, or subsection (c) provides otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws, or subsection (c) provides otherwise, special meetings of the board shall be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section -146.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty per cent of the directors then in office may call and give notice of a meeting of the board.

§ -146 Waiver of notice of meeting. (a) A director may at any time waive any notice required by this chapter, the articles, or the bylaws. Except as provided in subsection (b), the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director at the beginning of the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or the bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action.

§ -147 Quorum and voting. (a) Except as otherwise provided in this chapter, the articles, or the bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or the bylaws require the vote of a greater number of directors.

§ -148 Committees of the board. (a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

- (1) A majority of all the directors in office when the action is taken; or
- (2) The number of directors required by the articles or bylaws to take action under section -147.

(c) Sections -143 to -147, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, shall apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section -131.

(e) A committee of the board may not, however:

- (1) Authorize distributions;
- (2) Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;
- (3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or
- (4) Adopt, amend, or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section -149.

§ -149 General standards for directors. (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss

caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include indemnification of reasonable travel expenses and indemnification or insurance for actions as a director as allowed by sections -159 to -167.

§ -150 Director conflict of interest. (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b).

(b) A transaction in which a director has a conflict of interest may be approved if:

- (1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the transaction was authorized, approved, or ratified by the board or committee of the board; or
- (2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(c) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

- (1) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or
- (2) Another entity of which the director is a director, officer, or trustee is a party to the transaction.

(d) For purposes of subsection (b), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors either on the board or on the committee, who have no direct or indirect interest in the transaction; provided that a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (b)(1); provided the transaction is otherwise approved as provided in subsection (b).

(e) For purposes of subsection (b)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (c)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (b)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(f) The articles, the bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

§ **-151 Loans to or guaranties for directors and officers.** (a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section shall not affect the borrower's liability on the loan.

§ **-152 Liability for unlawful distributions.** (a) Unless a director complies with the applicable standards of conduct described in section -149, a director who votes for or assents to a distribution made in violation of this chapter shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution from:

- (1) Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section -149; and
- (2) Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

§ **-153 Required officers.** (a) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The bylaws or the board shall delegate responsibility to one of the officers to prepare minutes of the directors' and members' meetings and to authenticate records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

§ **-154 Duties and authority of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws, or to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

§ **-155 Standards of conduct for officers.** (a) An officer with discretionary authority shall discharge the officer's duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging an officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

(e) Any person who serves as an officer to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of or failure to perform duties of the position to which the person was appointed, unless the person was grossly negligent in the performance of or failure to perform the duties. For purposes of this section, remuneration does not include indemnification of reasonable travel expenses and indemnification or insurance for actions as an officer as allowed by sections -159 to -167.

§ **-156 Resignation and removal of officers.** (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

§ **-157 Contract rights of officers.** (a) The appointment of an officer shall not itself create contract rights.

(b) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

§ **-158 Officers' authority to execute documents.** Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 below, or by one officer in category 1 below and one officer in category 2 below.

(1) Category 1: The presiding officer of the board and the president; and

(2) Category 2: A vice president, the secretary, treasurer, and executive director.

§ **-159 Definitions.** Sections -160 to -167 shall incorporate the following definitions:

"Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

"Expenses" includes counsel fees.

“Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

“Official capacity” means with respect to a director, the office of director in a corporation and with respect to an individual other than a director as contemplated in section -165, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. “Official capacity” does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

“Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

“Proceeding” means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

§ -160 Authority to indemnify. (a) Except as provided in subsection (d), a corporation may indemnify a former or current director made a party to a proceeding against liability incurred in the proceeding if:

- (1) The individual conducted the individual’s self in good faith; and
- (2) The individual reasonably believed:
 - (A) In the case of conduct in an official capacity, that the individual’s conduct was in the corporation’s best interests;
 - (B) In all other cases, the individual’s conduct, at a minimum, did not oppose the corporation’s best interests; and
- (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual’s conduct was unlawful.

(b) A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, is not by itself determinative of a director’s failure to meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director’s liability under this section where the director’s liability has been determined:

- (1) In connection with a proceeding by or in the right of the corporation; or
- (2) In connection with any other proceeding whether or not involving action in an official capacity, in which the director was found liable on the basis of the director’s improper receipt of a personal benefit.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

§ -161 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

§ -162 Advance for expenses. (a) A corporation, before final disposition of a proceeding, may advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding; provided:

- (1) The director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section -160;
 - (2) The director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
 - (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.
- (b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.
- (c) Determinations and authorizations of payments under this section shall be made in the manner specified in section -164.

§ -163 Court-ordered indemnification. Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:

- (1) The director is entitled to mandatory indemnification under section -161, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section -160(a) or was found liable as described in section -160(d), but if the director was found liable indemnification is limited to reasonable expenses incurred.

§ -164 Determination and authorization of indemnification. (a) A corporation may not indemnify a director under section -160 unless authorized in the specific case after a determination has been made that the director has met the standard of conduct set forth in section -160.

(b) The determination shall be made by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(c) The determination shall be made by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding if a quorum cannot be obtained under subsection (b).

(d) The determination shall be made by special legal counsel selected by:

- (1) The board of directors or its committee in the manner prescribed in subsection (b) or (c); or
- (2) Majority vote of the full board (in which selection directors who are parties may participate) if a quorum of the board cannot be obtained under subsection (b) and a committee cannot be designated under subsection (c).

(e) The determination shall be made by the members but directors who are at the time parties to the proceeding may not vote on the determination.

(f) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel,

authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (d) to select counsel.

§ -165 Indemnification of officers, employees, and agents. (a) An officer of the corporation who is not a director, unless limited by a corporation's articles of incorporation, is entitled to mandatory indemnification under section -161, and is entitled to apply for court-ordered indemnification under section -163 in each case, to the same extent as a director.

(b) The corporation, unless limited by a corporation's articles of incorporation, may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

(c) A corporation may also, unless limited by a corporation's articles of incorporation, indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

§ -166 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section -160 or -161.

§ -167 Application of this part. (a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles.

(b) This part shall not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

PART IX. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

§ -181 Authority to amend. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

§ -182 Procedure to amend articles of incorporation. (a) Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or special

meeting of the members. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; and

- (2) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.

(b) Any number of amendments may be submitted and voted upon at any one meeting.

§ **-183 Articles of amendment.** A corporation amending its articles shall deliver to the department director articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
 - (B) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class;
- (6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section -188, a statement that the approval was obtained.

§ **-184 Restated, amended and restated, articles of incorporation.** (a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with section -105. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement.

(d) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement.

(e) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section -182.

(f) A corporation restating its articles shall deliver to the department director articles of restatement setting forth the name of the corporation and the text of the

restated articles of incorporation together with a statement that the restatement of incorporation correctly sets forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and any amendments thereto.

(g) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(h) The department director may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the information required by subsection (f).

(i) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements of this part.

(j) Upon its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required by section -183; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(k) The amended and restated articles of incorporation shall be delivered to the director for filing together with a statement setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or
- (2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section -183. The department director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (j)(2) and (3).

§ -185 Amendment pursuant to judicial reorganization. (a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section -188 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section -32.

(b) The individual or individuals designated by the court shall deliver to the department director articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ -186 Effect of amendment and restatement. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the

corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

§ **-187 Bylaws.** The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

§ **-188 Approval by third persons.** The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such a provision in the articles may only be amended with the approval in writing of such person or persons.

PART X. MERGER

§ **-201 Approval of plan of merger.** (a) One or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in section -202.

(b) The plan of merger shall set forth:

- (1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;
- (2) The terms and conditions of the planned merger; and
- (3) The manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

- (1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and
- (2) Other provisions relating to the planned merger.

§ **-202 Action on plan by board, members, and third persons.** (a) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, a plan of merger to be adopted shall be approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section -188 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section -145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section -105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section -184 or -187. The plan shall be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

§ -203 Articles of merger. After a plan of merger is approved by the board of directors, and if required by section -202, by the members and any other persons, the surviving or acquiring corporation shall deliver to the department director articles of merger setting forth:

- (1) The plan of merger;
- (2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section -202, a statement that the approval was obtained.

§ -204 Effect of merger. When a merger takes effect:

- (1) Every corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;
- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

§ -205 Merger with foreign corporation. (a) One or more foreign businesses or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

- (1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) The foreign corporation complies with section -203 if it is the surviving corporation of the merger; and
- (3) Each domestic nonprofit corporation complies with the applicable provisions of sections -201 and -202; provided that if it is the surviving corporation of the merger, compliance is with section -203.

(b) The surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed a resident of this State as its agent for service of process in any proceeding brought against it.

§ -206 Bequests, devises, and gifts. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

§ -207 Conversions into and from corporations. (a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

- (1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section -202 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;

- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member, or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;
- (4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members' consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership, of the converting entity into shares or other forms of ownership, of the converted entity, or any combination thereof.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After the conversion of a domestic corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the domestic corporation in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the department director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the department director prior to the effective date of the conversion. If the department director finds that the statement satisfies the requirements provided by law, the department director, after all fees have been paid, shall:

- (1) Stamp the statement and include the date of the filing;
- (2) File the document in the department director's office; and
- (3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the department director, the conversion shall be deemed abandoned and shall not be effective.

§ -208 Articles of conversion. (a) If a plan of conversion has been approved in accordance with section -202 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

(1) A statement certifying the following:

- (A) The name, form of entity, and state or country of incorporation, formation, or organization of the converting and converted entities;

- (B) That a plan of conversion has been approved;
- (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
- (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member or director, as the case may be, of the converting entity or the converted entity; and
- (2) If the converting entity is a domestic or foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the department director. The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the department director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the department director, after all fees have been paid shall:

- (1) Stamp the articles of conversion and include the date of the filing;
- (2) File the document in the department director's office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives.

§ -209 Effective date of the conversion. The conversion shall be effective upon the filing of the certificate of conversion.

§ -210 Effect of conversion. (a) Upon an effective conversion, the converting entity shall continue to exist without interruption, but in the organizational form of the converted entity.

(b) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances.

(c) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion.

(d) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion.

(e) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties.

(f) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership in the converted entity, as provided in the plan of conversion, shall be converted.

(g) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect; provided that the shareholder, partner, member, or other owner:

- (1) Agreed in writing to be liable for such debts or obligations;
- (2) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or

- (3) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity.

PART XI. SALE OF ASSETS

§ -221 Sale of assets in regular course of activities and mortgage of assets. (a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) is not required.

§ -222 Sale of assets other than in regular course of activities. (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b).

(b) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (1) By the board;
- (2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section -188 for an amendment to the articles or bylaws.

(c) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section -145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section -105. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

(h) A sale, lease, exchange, or other disposition of the property of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation if the corporation is retaining sufficient property to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange, or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid members' rights which might otherwise arise under this chapter.

PART XII. DISTRIBUTIONS

§ -231 **Prohibited distributions.** Except as authorized by section -232, a corporation shall not make any distributions.

§ -232 **Authorized distributions.** (a) A corporation may purchase its memberships if, after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with part XIII of this chapter.

PART XIII. DISSOLUTION

§ -241 **Dissolution by incorporators, directors, and third persons.** (a) A majority of the incorporators or directors of a corporation that has no members, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the department director articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with section -145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

§ -242 **Dissolution by directors, members, and third persons.** (a) Unless this chapter, any other state law, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, dissolution is authorized if it is approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section -188 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting

at which the approval is to be obtained in accordance with section -145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section -105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

§ -243 Articles of dissolution. (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the department director articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized;
- (3) A statement that dissolution was approved by a sufficient vote of the board;
- (4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and
 - (B) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class;
- (6) If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to section -242(a)(3), a statement that the approval was obtained.

(b) A corporation is dissolved upon the effective date of its articles of dissolution. The articles of dissolution may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.

§ -244 Revocation of dissolution. (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action

of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, the information required by section -243(a)(5) and (a)(6).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

§ -245 Effect of dissolution. (a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets and minimizing its liabilities;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its properties that will not be distributed in kind;
- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
- (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
- (6) If no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
- (7) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Subject its directors or officers to standards of conduct different from those prescribed in part VIII;
- (3) Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (4) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (6) Terminate the authority of the registered agent.

§ **-246 Known claims against dissolved corporation.** (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
- (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§ **-247 Unknown claims against dissolved corporation.** (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation’s principal office (or, if none in this State, its registered office) is or was last located;
- (2) List the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under section -246;
- (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

- (1) Against the dissolved corporation, to the extent of its undistributed assets; or
- (2) If the assets have been distributed in liquidation against any person other than a creditor of the corporation, to whom the corporation distributed the lesser of its property to the extent of the distributee’s pro rata share of the claim or the corporate assets distributed to the person in liquidation; provided the distributee’s total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

§ **-248 Grounds for administrative dissolution.** The department director may commence a proceeding under section -249 to administratively dissolve a corporation if:

- (1) The corporation fails to file its annual report with the department director for a period of two years;
- (2) The corporation is without a registered agent or registered office in this State for sixty days or more;
- (3) The corporation fails to notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (4) The corporation procured its articles of incorporation through fraud; or
- (5) The corporation has continued to exceed or abuse the authority conferred on it by law.

§ **-249 Procedure for and effect of administrative dissolution.** (a) Upon determining that one or more grounds exist under section -248 for dissolving a corporation, the department director shall give the corporation written notice of the department director's determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director's written notice, the department director may administratively dissolve the corporation by signing a decree of dissolution that recites the ground or grounds for dissolution and its effective date. The decree shall be filed in the department director's office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section -245 and notify its claimants under sections -246 and -247.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.

§ **-250 Reinstatement following administrative dissolution.** (a) A corporation administratively dissolved under section -249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) State the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (3) Contain a certificate from the department of taxation reciting that all taxes owed by the corporation have been paid.

(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.

(c) If the department director determines that the application contains the information required by subsection (a) and that the information is correct, the department director shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation at its last known address appearing in the records of the department director.

(d) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

§ -251 Appeal from denial of reinstatement. (a) The department director, upon denying a corporation's application for reinstatement following administrative dissolution, shall mail the corporation under section -74 a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the department director's certificate of dissolution, the corporation's application for reinstatement, and the department director's notice of denial.

(c) The court may summarily order the department director to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

§ -252 Grounds for judicial dissolution. (a) The court may dissolve a corporation in a proceeding by the attorney general if it is established that the corporation obtained its articles of incorporation through fraud or the corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) In a proceeding by fifty members or members holding five per cent of the voting power, whichever is less, or by a director or any person specified in the articles, the court may dissolve a corporation if it is established that:

- (1) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;
- (2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- (3) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or
- (4) The corporate assets are being misapplied or wasted.

(c) The court may dissolve a corporation in a proceeding by a creditor if it is established that:

- (1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
- (2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(d) The court may dissolve a corporation in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(e) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution, whether dissolution is in the public interest, provided the corporation serves a public purpose, and whether dissolution is the best way of protecting the interests of members.

§ -253 Procedure for judicial dissolution. (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in court. Venue for a proceeding brought by any other party named in section -252 lies in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.

(b) Directors or members shall not be deemed necessary parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

§ -254 Receivership or custodianship. (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation (authorized to transact business in this State) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. In addition to other powers:

(1) The receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided the receiver's power to dispose of the assets of the corporation shall be subject to any trust and other restrictions that would be applicable to the corporation; and

(B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this State.

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and its creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

§ -255 Decree of dissolution. (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in section -252 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the department director, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with section -245

and the notification of its claimants in accordance with sections -246 and -247.

§ -256 **Deposit with director of finance.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash subject to known trust restrictions and deposited with the director of finance for disposition in accordance with chapter 523A.

PART XIV. FOREIGN CORPORATIONS

§ -271 **Authority to transact business required.** (a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the department director.

(b) The following activities, in addition to others, do not constitute transacting business within the meaning of subsection (a):

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail, through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) shall not be limited to the activities listed.

§ -272 **Consequences of transacting business without authority.** (a) A foreign corporation transacting business in this State without a certificate of authority shall not maintain a proceeding in any court in this State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation that transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees that would have been imposed by this chapter upon the corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees.

The attorney general shall bring proceedings to recover all amounts due this State under this section.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

§ -273 Application for certificate of authority. (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director. The application must set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section -276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The street address of its principal office;
- (5) The address of its registered office in this State and the name of its registered agent at that office;
- (6) The names and usual business or home addresses of its current directors and officers; and
- (7) Whether the foreign corporation has members.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing (or a document of similar import) duly authenticated by the department director or other official having custody of corporate records in the state or country under whose law it is incorporated.

§ -274 Amended certificate of authority. (a) A foreign corporation authorized to transact business in this State shall obtain an amended certificate of authority from the department director if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of section -273 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ -275 Effect of certificate of authority. (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

§ -276 Corporate name of foreign corporation. (a) If the corporate name of a foreign corporation does not satisfy the requirements of section -61, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this State, may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the department director for filing a certificate of registration of a trade name by the foreign corporation under which the foreign corporation will transact business in this State.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;
- (3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this State; or
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the records of the department director from the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing, and one or more words are added to the other entity's name to make the name distinguishable from the name of the applicant; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A foreign corporation may use in this State the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of section -61, it shall not transact business in this State under the changed name until it adopts a name satisfying the requirements of section -61 and obtains an amended certificate of authority under section -274.

§ -277 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this State must continuously maintain in this State:

- (1) A registered office with the same address as that of its registered agent; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this State and whose office is identical with the registered office;

- (B) A domestic business or nonprofit corporation whose office is identical with the registered office; or
- (C) A foreign business or nonprofit corporation authorized to transact business in this State whose office is identical with the registered office.

§ -278 Change of registered office or registered agent of foreign corporation. (a) A foreign corporation authorized to transact business in this State may change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The corporation's name;
- (2) The street address of the current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ -279 Resignation of registered agent of foreign corporation. (a) The registered agent of a foreign corporation may resign as agent by signing and delivering to the department director for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the registered agent shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The registered agent shall mail a second copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement is filed.

§ -280 Service on foreign corporation. (a) The registered agent of a foreign corporation authorized to transact business in this State shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report filed under section -308 if the foreign corporation:

- (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
- (2) Has withdrawn from transacting business in this State under section -282; or
- (3) Has had its certificate of authority revoked under section -283.

(c) Service is perfected under subsection (b) at the earliest of:

- (1) The date the foreign corporation receives the mail;

- (2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

§ -281 Application to corporations heretofore authorized to transact business in this State. A foreign corporation that is duly authorized to transact business in this State at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure the authority under this chapter, shall be entitled to all of the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this chapter, and from the time this chapter takes effect, the corporation shall be subject to all of the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this chapter.

§ -282 Withdrawal of foreign corporation. (a) A foreign corporation authorized to transact business in this State shall not withdraw from this State until it obtains a certificate of withdrawal from the department director.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf, and appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this State;
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3); and
- (5) A commitment to notify the department director in the future of any change in the mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the department director under this section is service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

(d) After the filing of the application of withdrawal, the department director shall issue a certificate of withdrawal that shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign corporation to transact business in this State shall cease.

§ -283 Grounds for revocation of certificate of authority. (a) The department director may commence a proceeding under section -284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The foreign corporation has not filed its annual report with the department director for a period of two years;
- (2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;

- (3) The foreign corporation does not inform the department director under section -278 or -279 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect with the intent that the document be delivered to the department director for filing; or
- (5) The department director receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(b) The attorney general may commence a proceeding under section -284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if the corporation has continued to exceed or abuse the authority conferred upon it by law.

§ -284 Procedure and effect of revocation. (a) The department director upon determining that one or more grounds exist under section -283 for revocation of a certificate of authority shall give written notice of the department director's determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.

(b) The attorney general upon determining that one or more grounds exist under section -283(b) for revocation of a certificate of authority shall request the department director to give, and the department director shall give, the foreign corporation written notice of that determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.

(c) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department director that each ground for revocation determined by the department director does not exist within sixty days after the date of mailing of the department director's written notice, the department director may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The department director shall file the original of the certificate and serve a copy on the foreign corporation under section -280.

(d) The authority of a foreign corporation to transact business in this State shall cease on the date shown on the certificate revoking its certificate of authority.

(e) The department director's revocation of a foreign corporation's certificate of authority appoints the department director as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the department director under this subsection shall be service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(f) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ -285 Appeal from revocation. (a) A foreign corporation may appeal the department director's revocation of its certificate of authority to the circuit court

within thirty days after the certificate of revocation is signed. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the department director's certificate of revocation.

(b) The court may summarily order the department director to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

PART XV. RECORDS AND REPORTS

§ -301 Corporate records. (a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section -148(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) Minutes of all meetings of members and records of all actions approved by the members for the past three years;
- (5) All written financial statements furnished for the past three years under section -306;
- (6) A list of the names and business or home addresses of its current directors and officers; and
- (7) The most recent annual report delivered to the department director under section -308.

§ -302 Inspection of records by members. (a) Subject to sections -301(e) and -303(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in section -301(e) if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

- (1) Excerpts from any records required to be maintained under section -301(a), to the extent not subject to inspection under subsection (a);
- (2) Accounting records of the corporation; and

- (3) Subject to section -305, the membership list.
- (c) A member may inspect and copy the records identified in subsection (b) only if:
 - (1) The member's demand is made in good faith and for a proper purpose;
 - (2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and
 - (3) The records are directly connected with this purpose.
- (d) This section does not affect:
 - (1) The right of a member to inspect records:
 - (A) Under section -109; or
 - (B) If the member is in litigation with the corporation to the same extent as any other litigant; or
 - (2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

§ **-303 Scope of inspection rights.** (a) A member's agent or attorney shall have the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section -302 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and materials, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under section -302(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

§ **-304 Court-ordered inspection.** (a) If a corporation does not allow a member who complies with section -302(a) to inspect and copy any records required by that section to be available for inspection, the court in the county where the corporation's principal office (or, if none in this State, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with section -302(b) and (c) may apply to the court in the county where the corporation's principal office (or, if none in this State, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis to doubt the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

§ **-305 Limitations on use of membership list.** Without consent of the board, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

§ -306 Financial statements for members. (a) A corporation upon written demand from a member shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

- (1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

§ -307 Report of indemnification to members. If a corporation indemnifies or advances expenses to a director under sections -160 to -163, in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

§ -308 Annual report for the department director. (a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The address of its registered office and the name of its registered agent at the office in the State;
- (3) The address of its principal office;
- (4) The names and business or residence addresses of its directors and principal officers;
- (5) A brief description of the nature of its activities; and
- (6) Whether or not it has members.

(b) The information in the annual report shall reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.

(c) The first annual report shall be delivered to the department director by March 31 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the department director by June 30 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is

corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it shall deemed to be timely filed.

PART XVI. TRANSITION PROVISIONS

§ -321 **Application to existing domestic corporations.** This chapter applies to all domestic corporations in existence on its effective date that were incorporated under any general statute of this State providing for incorporation of nonprofit corporations if the power to amend or repeal the statute under which the corporation was incorporated was reserved.

§ -322 **Application to qualified foreign corporations.** A foreign corporation authorized to transact business in this State on the effective date of this chapter shall be subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

§ -323 **Saving provisions.** (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
- (5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

§ -324 **Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 2. Section 415B-4, Hawaii Revised Statutes, is amended to read as follows:

"§415B-4 **Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that labor unions, cooperative organizations other than limited-equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State, other than a pure captive insurance company with a nonprofit parent company, a mutual benefit society, or the Hawaii employers' mutual insurance company established by section 431:14A-103, shall not be organized under this chapter."

SECTION 3. Chapter 415B, Hawaii Revised Statutes, is repealed.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved May 18, 2001.)

ACT 106

H.B. NO. 611

A Bill for an Act Relating to Concessions at Public Library Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-3.8, Hawaii Revised Statutes, is amended to read as follows:

“[§312-3.8] Hawaii state library foundation and friends of the library of Hawaii concessions; use of public library facilities. (a) Notwithstanding any law to the contrary, the ~~[department of education,]~~ Hawaii state public library system, through the state librarian, shall be authorized to issue licenses, revocable permits, concessions, or rights of entry to the Hawaii state library foundation and the friends of the library of Hawaii for the use of public library system facilities and grounds and for such periods of use as deemed appropriate by the ~~[department.]~~ state librarian. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when such dispositions are for periods in excess of one year.

(b) Notwithstanding any law to the contrary, all net income or proceeds received by the Hawaii state library foundation and the friends of the library of Hawaii from the operation of any concession, vending machine, or other for-profit business enterprise within, or on the grounds of, any state library facility shall be deposited into the Hawaii state library foundation trust fund~~[- The disposition of such net income or proceeds shall be subject to the provisions of section 312-3.7.]~~ or the friends of the library of Hawaii trust fund, as appropriate. All funds deposited into the trust funds, including income and capital gains earned therefrom, shall be used exclusively for state library programs.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 107

H.B. NO. 612

A Bill for an Act Relating to the Library Enhanced Services Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1993, recognizing that the Hawaii state public library system’s ability to provide services to its patrons was being severely compromised by the limited amount of operational funds made available to it, the legislature

decided to support the library system's efforts to generate alternative sources of revenue by enacting Act 327, Session Laws of Hawaii 1993. Act 327, subsequently amended by Act 144, Session Laws of Hawaii 1996, and Act 29, Session Laws of Hawaii 1999, to extend its repeal date, permits the library system to collect cost-recovery based fees for providing enhanced services to its patrons that are in addition to those mandated by law and supported by state tax revenues.

The legislature finds that the fees collected by the public library system for providing enhanced services has allowed it to support its service program and remain a leader of innovative library services to the residents of the State of Hawaii.

The purpose of this Act is to permanently establish the library system's ability to collect fees for enhanced services.

SECTION 2. Act 327, Session Laws of Hawaii 1993, as amended by Act 144, Session Laws of Hawaii 1996, and Act 29, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

~~“SECTION 3. This Act shall take effect upon its approval [and shall be repealed on July 1, 2002].”~~

SECTION 3. Statutory material to be repealed is bracketed.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

Note

1. So in original.

ACT 108

H.B. NO. 613

A Bill for an Act Relating to Reallocation of Vacant Library Positions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1996, the legislature by Act 196, Session Laws of Hawaii 1996, granted the state librarian temporary authority to reallocate vacant positions, directly authorize and implement internal reorganization actions, and create temporary positions, not to exceed one year, as necessary. Pursuant to Act 196, Session Laws of Hawaii 1996, the state librarian has reallocated positions vacated by retirements, transfers, and resignations to public libraries where they were needed the most. When no vacant positions were available, the state librarian established temporary positions of not more than one year to meet the library staffing needs. In 1999, by Act 130, section 2, the legislature extended the repeal date of Act 196, Session Laws of Hawaii 1996, to June 30, 2002.

The legislature finds that the application of the authority granted by Act 196, Session Laws of Hawaii 1996, has been successful in meeting the public and staffing needs of the Hawaii state public library system and has promoted the efficient allocation of human resources within the library system. This authority has also helped support employee satisfaction at urban, rural, remote, and new libraries.

Accordingly, the purpose of this Act is to permanently grant the state librarian the authority to reallocate vacant positions, directly authorize and implement internal reorganization actions, and create temporary positions, not to exceed one year, as necessary. The permanent authority is needed to provide for public library services at the right time and in the right place during the complex, time-consuming reorganization efforts currently underway.

SECTION 2. Act 196, Session Laws of Hawaii 1996, as amended by Act 130, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval [~~and shall be repealed on June 30, 2002~~].”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 109

H.B. NO. 614

A Bill for an Act Relating to the Hawaii State Public Library System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to its other duties, the board of education, through the state librarian, shall:

- (1) Provide for the establishment and ongoing operation of a literacy and lifelong learning program[~~, including but not limited to the planning, programming, and budgeting of operating, research and development, and capital investment programs;~~] for the public libraries in the State;
- (2) [~~Coordinate~~] Provide coordination and [facilitate] facilitation of the activities of literacy service providers and literacy programs in the public, private, and volunteer sectors;
- [~~(3) Serve as a clearinghouse for information relating to grants and other moneys available for literacy providers and programs, literacy services available in the State, the measurable results of various literacy programs, and statistics and demographics concerning those individuals receiving and in need of literacy services;~~
- (4) Develop public-private sector literacy partnerships with the assistance of the advisory alliance for literacy and lifelong learning; and
- (5) Act as the oversight state agency in the public-private partners for literacy trust fund for the purpose of section 312-9(d).] and
- (3) Develop public-private sector literacy partnerships for literacy program support.”

SECTION 2. Section 312-9, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 312-10, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 110

H.B. NO. 624

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 222 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§222. Administration. (a) ~~[The department shall adopt rules and regulations and policies in accordance with chapter 91, Hawaii Revised Statutes.]~~ The department may make such expenditures and shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, as are necessary for the efficient execution of the functions vested in the department by this Act. All expenditures of the department and all moneys necessary for loans made by the department, in accordance with the provisions of this Act, shall be allowed and paid upon the presentation of itemized vouchers approved by the chairman of the commission or the chairman’s designated representative. The department shall make an annual report to the legislature of the State upon the first day of each regular session and such special reports as the legislature may from time to time require. The chairman and members of the commission shall give bond as required by law. The sureties upon the bond and the conditions thereof shall be approved annually by the governor.

(b) When land originally leased by the department in accordance with chapter 171, Hawaii Revised Statutes, is, in turn, ~~[subleased]~~ subleased by the department’s lessee or sublessee, the department shall submit, ~~[within ten days]~~ upon the first day of the convening of any regular session, a written report to the legislature which shall cover the sublease transactions occurring in the ~~[calendar]~~ fiscal year prior to the regular session and shall contain the names of the persons involved in the transaction, the size of the area under lease, the purpose of the lease, the land classification of the area under lease, the tax map key number, the lease rental, the reason for approval of the sublease by the department, and the estimated net economic result accruing to the department, lessee, and sublessee.”

SECTION 2. The provisions of this amendment under this Act are declared to be severable, and if any section, sentence, clause, or phrase, or application thereof to any person or circumstance is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 111

H.B. NO. 653

A Bill for an Act Relating to Substance Abuse Treatment Insurance Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Qualified” means:

- (1) Having skill in the diagnosis or treatment of substance use disorders, based on a practitioner’s credentials, including but not limited to professional education, clinical training, licensure, board or other certification, clinical experience, letters of reference, other professional qualifications, and disciplinary action; or
- (2) Being a licensed physician, psychologist, or clinical social worker, or advanced practice registered nurse, and be certified pursuant to chapter 321.”

SECTION 2. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definitions of “alcohol or drug dependence outpatient services,” “substance abuse services,” and “treatment episode” to read as follows:

““Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes interventions prescribed and performed by qualified physicians, psychologists, clinical social workers, or advanced practice registered nurses [~~who have been certified pursuant to chapter 321~~]. This definition shall not imply a broadening of the scope of or granting of prescriptive authority privileges, except as otherwise allowed pursuant to chapter 457.

“Substance abuse services” means the provision of medical, psychological, nursing, counseling, or therapeutic services in response to a treatment plan for alcohol or drug dependence or both which shall include, when appropriate, a combination of aftercare and individual, group, and family counseling services provided by [~~certified substance abuse~~] qualified staff.

“Treatment episode” means one admission to an accredited hospital or nonhospital facility, or office of a qualified physician, psychologist, clinical social worker, or advanced practice registered nurse [~~certified pursuant to chapter 321~~] for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and which would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 3. Section 431M-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Alcohol and drug dependence benefits shall be as follows:

- (1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility which has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:

- (A) Room and board;
- (B) Diagnostic x-rays;

- (C) Laboratory testing; and
 - (D) Drugs, equipment use, special therapies, and supplies.
- Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);
- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, clinical social worker, or advanced practice registered nurse [~~certified pursuant to chapter 321~~] shall determine that the person suffers from alcohol or drug dependence, or both. The substance abuse services covered under this paragraph shall include those services which are required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system, and services performed by mutual self-help groups; and
 - (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, clinical social worker, or advanced practice registered nurse [~~certified pursuant to chapter 321~~] and must be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a clinical social worker or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a)."

SECTION 4. Section 431M-1, Hawaii Revised Statutes, is amended by repealing the definition of "certified substance abuse staff".

~~[""Certified substance abuse staff" means professionals and paraprofessionals with current full certification as substance abuse counselors or program administrators under chapter 321, physicians who hold a current American Society of Addiction Medicine certificate or who are board certified in addiction psychiatry, and psychologists who hold a current certification from the American Psychological Association College of Professional Psychology in the treatment of alcohol and other psychoactive substance use disorders.""]~~

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001; provided that insurance, health, or service plan contracts subject to the terms of this Act and issued or renewed after December 31, 2001, shall be amended to be consistent with this Act.

(Approved May 18, 2001.)

ACT 112

H.B. NO. 670

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-123, Hawaii Revised Statutes, is amended to read as follows:

“§383-123 Withdrawals; administrative use. (a) Withdrawals. Moneys requisitioned from the State’s account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds of contributions pursuant to section 383-76 and section 383-7(6), except that moneys credited to this State’s account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b) ~~[of this section]~~. The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with rules prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount ~~[standing to this]~~ in the State’s account ~~[therein]~~, as it deems necessary for the payment of ~~[such]~~ benefits and refunds of contributions for a reasonable future period. ~~[Upon receipt thereof the]~~ The moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds of contributions shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the department. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the department, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this State’s account in the unemployment trust fund, as provided in section 383-122.

(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this ~~[chapter pursuant to a specific appropriation by the legislature;]~~ State’s unemployment compensation law and public employment offices pursuant to a specific appropriation of the legislature; provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (1) specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor, (2) limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (A) the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods exceeds (B) the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State during such thirty-five twelve-month periods. For the purposes of this subsection, amounts which are obligated for administration

or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such twelve-month period earlier than the thirty-fourth preceding such period.

Moneys credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Moneys so deposited shall, until expended, remain a part of the unemployment compensation fund and, if it will not be expended within one week after it is withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund.

(c) Notwithstanding subsection (b), moneys credited to the State's account in federal fiscal years ending in 2000, 2001, and 2002 shall be used solely for the administration of the unemployment compensation program and are not subject to the specific appropriation requirements of subsection (b)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that to the extent that this Act applies to monies credited to the state's account in federal years ending in 2000 and 2001, this Act is intended to have retrospective effect and operation.

(Approved May 18, 2001.)

ACT 113

H.B. NO. 715

A Bill for an Act Relating to the Integrated Tax Information Management Systems Acquisition by the Department of Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure that needed resources are available to assist the department of taxation in its efforts to meet the obligations of the integrated tax information management systems performance-based contract.

SECTION 2. There is appropriated out of the integrated tax information management systems special fund the sum of \$9,005,838, or so much thereof as may be necessary, for fiscal year 2001-2002, and the sum of \$10,751,003, or so much thereof as may be necessary, for fiscal year 2002-2003, to carry out the purposes of this Act.

SECTION 3. The sums appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

ACT 114

H.B. NO. 730

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-8.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a University of Hawaii research and training revolving fund into which shall be deposited one hundred per cent of the total amount of indirect overhead revenues generated by the university from research and training programs. The board of regents of the University of Hawaii is authorized to expend ~~[eighty-four]~~ one hundred per cent of the revenues deposited in the fund for:

- (1) Research and training purposes which may result in additional research and training grants and contracts; ~~[and]~~
- (2) Facilitating research and training at the university~~[-]; and~~
- (3) Further deposit into the discoveries and inventions revolving fund and the University of Hawaii housing assistance revolving fund.”

SECTION 2. Section 304-8.92, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a discoveries and inventions revolving fund into which shall be deposited ~~[four per cent]~~ a portion of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year~~[-]~~ as determined by the board of regents. Appropriations by the state legislature subject to the approval of the governor, proceeds from the commercial exploitation of inventions and intellectual property developed at the university, gifts, donations, fees collected, and grants from public agencies and private persons may also be deposited into the fund for the purposes of supporting innovation and research commercialization and the patenting, copyrighting, licensing, and marketing of discoveries, inventions, and technologies developed at the university. The fund shall be used to develop technologies which have potential commercial value, support the administration of technology transfer activities, and facilitate economic development through education and research undertaken at the university.”

SECTION 3. Section 304-8.96, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a housing assistance revolving fund into which shall be deposited ~~[twelve per cent]~~ a portion of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year~~[-]~~ as determined by the board of regents. The fund shall be used to:

- (1) Implement the University of Hawaii housing assistance master plan, in accordance with policies adopted by the board of regents; and
- (2) Account for all transactions of the university housing assistance program, including but not limited to revenues, expenditures, loans, and transfers.”

ACT 115

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 115

H.B. NO. 735

A Bill for an Act Relating to the Research Corporation of the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 307-6, Hawaii Revised Statutes, is amended to read as follows:

“§307-6 Annual report. The research corporation shall submit an annual report to the governor, president of the state senate, and the speaker of the state house of representatives. The report shall include, but not be limited to, the corporation’s audited financial statement, total ~~[number and amount of gifts received, payroll disbursements, research or other equipment purchased exceeding \$4,000, contracts entered into,]~~ amount of payroll and other disbursements made, and progress and accomplishments made during the year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 116

H.B. NO. 996

A Bill for an Act Relating to Drug Demand Reduction Assessments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 205, Session Laws of Hawaii 1995, as amended by Act 7, Session Laws of Hawaii 1996, and Act 152, Session Laws of Hawaii 1998, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, ~~[2001-]~~ 2004.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 117

H.B. NO. 1048

A Bill for an Act Relating to the State Librarian.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-2.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The salary of the state librarian shall be [~~\$85,302 a year-~~] set by the board of education at a rate no greater than \$120,000 a year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 118

H.B. NO. 1118

A Bill for an Act Relating to Hunting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183D-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of this section:

“Game management area” means an area so designated by either executive order, rule, cooperative agreement, or action of the board of land and natural resources that has been set aside for the primary purpose of managing, sustaining, and enhancing habitat and populations of game mammals and/or game birds, and providing public hunting and, secondarily, other compatible uses.

“Public hunting area” means those lands designated by the board of land and natural resources as areas where the public may hunt game birds and mammals[-], including:

- (1) Game management areas;
- (2) Forest reserves and surrendered lands;
- (3) Natural area reserves;
- (4) Restricted watersheds;
- (5) Cooperative game management areas;
- (6) Military training areas;
- (7) Unencumbered state lands;
- (8) Designated sanctuaries; and
- (9) Other lands designated by the board.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that article VII, section 6, of the Constitution of the State of Hawaii requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met and that the legislature is constitutionally required to provide a tax credit or tax refund.

The purpose of this Act is to provide for an income tax credit of \$1 times the number of the taxpayer's qualified exemptions to every resident, individual taxpayer of the State to satisfy constitutionally mandated requirements.

SECTION 2. (a) There shall be allowed each resident individual taxpayer, who files an individual income tax return for the taxable year 2001, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, a general income tax credit of \$1 that shall be deducted from income tax liability computed under chapter 235,¹ has no income or no income taxable under chapter¹ and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit.

Each resident individual taxpayer may claim the general income tax credit multiplied by the number of qualified exemptions to which the taxpayer is entitled.

Each person for whom the general income tax credit is claimed shall have been a resident of the State, as defined in section 235-1, Hawaii Revised Statutes, for at least nine months regardless of whether the qualified resident was physically in the State for nine months.

Multiple exemptions shall not be granted for the general income tax credit because of age or deficiencies in vision, hearing, or other disability.

The general income tax credit shall not be available to:

- (1) Any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year;
- (2) Any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or
- (3) Any misdemeanor who has been committed to jail and has been physically confined for the full taxable year.

The tax credit claimed by a resident taxpayer pursuant to this Act shall be deductible from the resident taxpayer's individual income tax liability for the taxable year 2001. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that a tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

All claims for tax credits under this Act, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with this filing requirement shall constitute a waiver of the right to claim the credit.

(b) This section implements the provisions of article VII, section 6, of the Constitution of the State of Hawaii, enacted by the 1978 constitutional convention, which reads as follows:

“DISPOSITION OF EXCESS REVENUES

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.”

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

Note

1. So in original.

ACT 120

S.B. NO. 1067

A Bill for an Act Relating to Limiting Hurricane Property Insurance Risk.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 3 to be appropriately designated and to read as follows:

“§431:3- Residential hurricane coverage. (a) Upon written request of the commissioner by certified mail, an insurer writing the peril of residential hurricane coverage in this State shall within thirty days after receipt of the request, make accessible to the commissioner or commissioner’s designee information verifying that the insurer has the financial assets and ability to cover its hurricane insurance exposure. The information to be made accessible shall include:

- (1) The aggregate amount of hurricane coverage premiums and aggregate limits of coverage by type of coverage, which shall be compiled on a quarterly basis;
- (2) The probable maximum loss associated with the above aggregate limits, assuming the occurrence of a hurricane of a severity unlikely to occur more frequently than once every one hundred years, as that loss is estimated in a report prepared by a recognized hurricane modeling company;
- (3) All financial information relating to the insurer’s capital base and reinsurance program for hurricane losses, such as:
 - (A) Information describing the reinsurance program in place as of the date notice was received;
 - (B) The names and financial ratings of each reinsurer;
 - (C) Aggregate limits of reinsurance coverage available; and
 - (D) Reinstatement provisions;and
- (4) Any other related information the commissioner may require to evaluate the adequacy of the program.

(b) If the commissioner determines that the loss estimated pursuant to subsection (a) exceeds the sum of an insurer’s capitalization and available reinsurance, the commissioner may further examine that insurer’s financial position as allowed by article 2 and commence supervisory and other appropriate proceedings under article 15.

(c) The cost of an examination under this section shall be assessed against the insurer being examined and remitted to the commissioner for deposit into the insurance regulation fund.

(d) Any final order or decision of the commissioner under this section shall be made pursuant to chapter 91.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval; provided that insurers affected by this Act shall not be subject to its provisions before January 1, 2002.

(Approved May 18, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 121

S.B. NO. 1069

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-202.5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~431:2-202.5] Approval; when deemed effective. ~~[Unless specifically exempted from this section,]~~ Except as provided otherwise, any approval required by law shall be deemed granted on the thirtieth calendar day following the filing of the request for approval if the commissioner does not take any affirmative action to grant or deny the approval within thirty calendar days of the request.”

SECTION 2. Section 431:10D-503, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Except as provided in section ~~[431:10D-504(6),]~~ 431:10D-505(c), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific contract or policy purchased.”

SECTION 3. Section 431:10D-504, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~431:10D-504] Duties of insurers that use producers. Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of this part that shall include at least the following:
 - (A) Inform its producers of the requirements of this part and incorporate the requirements of this part into all relevant producer training manuals prepared by the insurer;
 - (B) Provide to each producer a written statement of the company’s position with respect to the acceptability of replacements pro-

viding guidance to its producer as to the appropriateness of these transactions;

- (C) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with [paragraph (2);] subparagraph (B);
 - (D) Procedures to confirm that the requirements of this part have been met; and
 - (E) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer.
- Compliance with this section may include but shall not be limited to systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract for replacements for the insurer, and shall produce, upon request, and make such records available to the commissioner. The capacity to monitor shall include the ability to produce records for each producer's:
 - (A) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (B) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (C) Annuity contract replacements as a percentage of the producer's total annual contract sales;
 - (D) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by paragraph (1)(E); and
 - (E) Replacements, indexed by replacing producer and existing insurer;
 - (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
 - (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice as required by section 431:10D-503(b) regarding replacements;
 - (5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material as required by section 431:10D-503(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
 - (6) Ascertain that the sales material and illustrations required by section 431:10D-503(e) meet the requirements of this part and are complete and accurate for the proposed policy or contract;
 - (7) If an application does not meet the requirements of this part, notify the producer and applicant and fulfill the outstanding requirements; and
 - (8) Maintain records in paper, photograph, microprocess, mechanical, or electronic media, or by any process that accurately reproduces the actual paper document."

SECTION 4. Section 431:10D-505, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to section [431:10D-504,] 431:10D-503(e), the insurer may:

- (1) Require with each application a statement signed by the producer that:
 - (A) Represents that the producer used only company-approved sales material; and
 - (B) States that copies of all sales material were left with the applicant in accordance with section 431:10D-503(d); and
- (2) Within ten days of the issuance of the policy or contract:
 - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with section 431:10D-503(d);
 - (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - (C) Stress the importance of retaining copies of the sales material for future reference; and
- (3) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

ACT 122

S.B. NO. 1101

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 209 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

“(a) Upon the death of the lessee, the lessee’s interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee’s interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, children, or grandchildren, or (2) native Hawaiian, father and mother, widows or widowers of the children, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, — the lessee shall designate the person or persons to whom the lessee directs the lessee’s interest in the tract or tracts to vest upon the lessee’s death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases that person or persons need not be

eighteen years of age. The designation shall be in writing, may be specified at the time of execution of the lease with a right in the lessee in similar manner to change the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest the interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

- (1) Husband or wife; or
- (2) If there is no husband or wife, then the children; or
- (3) If there is no husband, wife, or child, then the grandchildren; or
- (4) If there is no husband, wife, child, or grandchild, then from the following relatives of the lessee who are native Hawaiian: father and mother, widows or widowers of the children, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of the lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, children, grandchildren, or relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease the land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all the improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. These payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make these payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund. The successor or successors may be required by the commission to obtain private financing in accordance with section 208(6) to pay off the amount advanced from the Hawaiian home loan fund or Hawaiian home general loan fund."

SECTION 2. The amendments made by this Act are declared to be severable, and if any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

ACT 123

S.B. NO. 1115

A Bill for an Act Relating to Human Resources.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 26-5, Hawaii Revised Statutes, is amended to read as follows:

“§26-5 Department of human resources development. The department of human resources development shall be headed by a single executive to be known as the director of human resources development.

The director shall have the authority to adopt rules as heretofore exercised by the civil service commission. Whenever consistent with economic and efficient administration, the director may delegate any of the duties imposed upon the director by chapter 76 or chapter 77 to the department heads, or any of them, in accordance with standards and procedures issued by the director. The director shall institute and maintain a system of inspection to determine that the personnel laws are applied and administered by the departments in a manner consistent with the purposes and provisions of the civil service law. Whenever an inspection indicates failure on the part of a department to comply with established policies, rules, and standards, the director shall take any action that may be appropriate, including suspension or revocation of any delegation of the director's authority.

The department shall administer the state human resources program, including human resources development and training, and central human resources services such as recruitment, examination, position classification, and pay administration for all departments.

There shall be within the department of human resources development a commission to be known as the civil service commission which shall sit as an appellate body on matters within the jurisdiction of the department of human resources development. The commission shall consist of seven members, one from each county and three at large. At least one member of the commission shall be selected from among persons employed in private industry in skilled or unskilled laboring positions as distinguished from executive or professional positions. The functions, duties, and powers of the commission with respect to appeals shall be as heretofore provided by law for the civil service commission and for the loyalty board existing immediately prior to November 25, 1959.

The functions and authority heretofore exercised by the department of civil service and loyalty board as heretofore constituted are transferred to the department of human resources development established by this chapter.

Nothing in this section shall be construed as in any manner affecting the civil service laws applicable to the several counties which shall remain the same as if this chapter had not been enacted.

~~[There is created in the state treasury a special fund, which shall consist of two separate accounts to be expended by the department as follows:~~

- ~~(1) All revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the~~

department's budget for services rendered by the department shall be deposited into the entrepreneurial account and expended for the department's related activities and programs; provided that the department may use the moneys in the fund to employ necessary personnel or for other purposes in support of departmental entrepreneurial initiatives and programs; and

- (2) All revenues received by the department from the charging of participant fees for in-service training, that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, shall be deposited into the in-service training account and expended for the department's training activities and programs.]

There is established in the state treasury the human resources development special fund, to be administered by the department of human resources development, which shall consist of: all revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the department's budget for services rendered by the department, all revenues received by the department from the charging of participant fees for in-service training that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, appropriations made by the legislature to the fund, and moneys directed to the department from any other source, including gifts, grants, and awards.

Moneys in the human resources development special fund shall be used for the following purposes:

- (1) Supporting the department's entrepreneurial initiatives, training activities, and programs;
- (2) Administrative costs of the department's entrepreneurial initiatives, training activities, and programs; and
- (3) Any other purpose deemed necessary by the director for the purpose of facilitating the department's entrepreneurial initiatives, training activities, and programs."

SECTION 2. Chapter 76, part IV, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 76, part VI, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 76-101, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 76-102, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 76-104, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 76-105, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 76-106, Hawaii Revised Statutes, is repealed.

SECTION 9. Act 253, Session Laws of Hawaii 2000, section 2, is amended by amending subsection (f) of section 26-5, Hawaii Revised Statutes, to read as follows:

"(f) There is [ereated] established in the state treasury [a] the human resources development special fund, [which shall consist of two separate accounts to be expended by the department as follows:

- (1) All revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the

department's budget for services rendered by the department shall be deposited into the entrepreneurial account and expended for the department's related activities and programs; provided that the department may use the moneys in the fund to employ necessary personnel or for other purposes in support of departmental entrepreneurial initiatives and programs; and

- (2) All revenues received by the department from the charging of participant fees for in-service training, that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, shall be deposited into the in-service training account and expended for the department's training activities and programs].¹

to be administered by the department of human resources development, which shall consist of: all revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the department's budget for services rendered by the department, all revenues received by the department from the charging of participant fees for in-service training that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, appropriations made by the legislature to the fund, and moneys directed to the department from any other source, including gifts, grants, and awards.

Moneys in the human resources development special fund shall be used for the following purposes:

- (1) Supporting the department's entrepreneurial initiatives, training activities, and programs;
- (2) Administrative costs of the department's entrepreneurial initiatives, training activities, and programs; and
- (3) Any other purpose deemed necessary by the director for the purpose of facilitating the department's entrepreneurial initiatives, training activities, and programs."

SECTION 10. Act 253, Session Laws of Hawaii 2000, section 12, is amended by amending subsection (c) of section 76-14, Hawaii Revised Statutes, to read as follows:

“(c) The rules adopted by the merit appeals board shall provide for the following:

- (1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;
- (2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;
- (3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and
- (4) The merit appeals board shall use the conditions listed in section [76-41(e)] 76-41(b) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit.”

SECTION 11. Act 253, Session Laws of Hawaii 2000, section 19, is amended by amending subsection (d) of section 76-27, Hawaii Revised Statutes, to read as follows:

“(d) A member who is promoted or transferred to another position in the civil service may be required to successfully serve a new probation period as part of the examination process to determine the employee’s fitness and ability for the new position but shall be entitled to all the rights and privileges of a member of the civil service, except the right to appeal a ~~[discharge]~~ release from the new position (as distinguished from discharge from the service) for inefficiency during the probationary period, in which case the member shall be returned to the former position or a comparable position.”

SECTION 12. Act 253, Session Laws of Hawaii 2000, section 77, is amended by amending subsection (c) of section 78-12, Hawaii Revised Statutes, to read as follows:

“(c) The officer, agent, employee, or other person in the service of the jurisdiction, alleged to be indebted to a jurisdiction, may waive the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and
- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.”

SECTION 13. Act 253, Session Laws of Hawaii 2000, section 77, is amended by amending subsection (g) of section 78-12, Hawaii Revised Statutes, to read as follows:

“(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

- (1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest~~[, to be calculated at a rate and in such manner as the disbursing officer establishes by rules;]~~ as specified by section 103-10; or
- (2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee’s respective leave or compensatory time accounts and shall not result in a cash payment.”

SECTION 14. There is appropriated out of the human resources development special fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the purposes of the fund.

The sum appropriated shall be expended by the department of human resources development for the purposes of this part.

PART II

SECTION 15. Act 253, Session Laws of Hawaii 2000, is amended by amending section 149 to read as follows:

“SECTION 149. The provisions of sections 131, 132, 133, 134, 135, and 136 of this Act notwithstanding, the rights, benefits, and privileges currently enjoyed by persons occupying civil [servants] service positions under chapters 77, 79, 80, 81, 82, and 83, Hawaii Revised Statutes, who were hired prior to July 1, 2001, shall not be diminished or impaired, ~~[unless comparable]~~ until those rights, benefits, and privileges are either negotiated into collective bargaining agreements or established by executive order for civil ~~[servants-]~~ service employees.”

SECTION 16. Act 253, Session Laws of Hawaii 2000, is amended by amending section 152 to read as follows:

“SECTION 152. This Act shall take effect on July 1, 2002; provided that [section];

- (1) Section 26-5(f), Hawaii Revised Statutes, in Section 2, and Parts V and IX of this Act shall take effect on July 1, 2000[-]; and
- (2) Section 132 of this Act shall take effect on July 1, 2001.”

PART III

SECTION 17. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 18. This Act shall take effect on July 1, 2002, except that sections 1, 15, 16, and 17 of this Act shall take effect upon approval, and section 14 shall take effect on July 1, 2001.

(Approved May 18, 2001.)

Notes

1. Period should be bracketed.
2. Edited pursuant to HRS §23G-16.5.

ACT 124

S.B. NO. 1119

A Bill for an Act Relating to Prescription Drugs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 328, Hawaii Revised Statutes, is amended by adding to part I two new sections to be appropriately designated and to read as follows:

“§328- **Electronic prescription information.** (a) Prescription information may be transmitted electronically; provided that:

- (1) The information shall be communicated only between the prescribing practitioner or the prescriber’s authorized agent and pharmacies or medical oxygen distributors of the patient’s choice;
- (2) The information shall be communicated in a retrievable, recognizable format acceptable to the intended recipient;
- (3) No electronic system, software, or other intervening mechanism or party shall alter the practitioner’s prescription, order entry, selection, or intended selection without the practitioner’s approval, on a per prescription or per order basis. Transmitted prescription information shall not be altered by any system, software, or other intervening mechanism or party prior to receipt by the intended pharmacy or medical oxygen distributor recipient;

- (4) The prescription information processing system shall provide for adequate confidentiality safeguards provided by any applicable federal or state law; and
- (5) Practitioners, pharmacists, and medical oxygen distributors shall exercise prudent and professional judgment regarding the accuracy, validity, and authenticity of any prescription information communicated, received, or transferred.

(b) Nothing in this section shall be construed or interpreted to prevent the transmission of health care information, including prescription information, between health plans and their authorized agents and prescribing practitioners, pharmacists, and medical oxygen distributors for the purpose of the adjudication or payment of claims.

§328- Supply of electronic equipment. No person shall supply prescription information processing system equipment, including computer hardware, software, facsimile machines, and related equipment, to practitioners, pharmacists, pharmacies, or medical oxygen distributors, on the condition, agreement, or understanding that the recipient of the equipment shall not deal in the commodity of a competitor, shall not deal with a competitor, or shall deal only with persons identified by the supplier of the equipment.”

SECTION 2. Section 328-1, Hawaii Revised Statutes, is amended as follows:

1. By adding ten new definitions to be appropriately inserted and to read:

““Agent” means a person who acts on behalf of or under the direction of another person.

“Computer” means a programmable electronic device, capable of multiple functions including but not limited to storage, retrieval, and processing of information.

“Downtime” means the period of time that a prescription information processing system is not operable.

“Electronic prescription” means a prescription or certificate of medical necessity, which is electronically transmitted or conveyed, including a facsimile transmission.

“Legible” means information that is capable of being read and understood.

“Pharmacy” means a place of business operating as a pharmacy as permitted under chapter 461.

“Prescriber’s authorized agent” means a person, including but not limited to an institutional facility, who acts on behalf of, and under the direction of, the prescribing practitioner.

“Prescription information processing system” means a system for creating, generating, sending, receiving, storing, displaying, or processing prescription information, including but not limited to any electronic hardware, software, or files.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium.

“Supply” means to sell, trade, distribute, exchange, barter, give, offer for sale, lease, rent, or provide.”

2. By amending the definitions of “medical oxygen distributor” and “pharmacist” to read:

““Medical oxygen distributor” means any person, including a licensed prescription drug wholesale distributor, who [distributes or dispenses] holds a permit under chapter 461 to distribute or dispense medical oxygen pursuant to a prescription.

“Pharmacist” means a person who is licensed or holds a permit under chapter 461 to practice in a pharmacy~~[-], including a pharmacy intern under the immediate and direct supervision of a licensed pharmacist.”~~

3. By repealing the definition of “pharmacy intern”.

~~[[“Pharmacy intern” means a student or graduate of a school or college of pharmacy issued a permit by the board of pharmacy to work under the immediate supervision of a pharmacist.”]~~

SECTION 3. Section 328-16, Hawaii Revised Statutes, is amended to read as follows:

“§328-16 Drugs limited to dispensing on prescription. (a) A prescription drug shall be dispensed only if its label bears the following:

- (1) The name, business address, and telephone number of the seller. The business address shall be the physical location of the pharmacy or the dispensing practitioner’s office;
- (2) The name of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed;
- (3) The serial number of the prescription;
- (4) The date ~~[of]~~ the prescription ~~[or of its filling;]~~ was prepared;
- (5) The name of the practitioner if the seller is not the practitioner;
- (6) The name, strength, and quantity of the drug;
- (7) The date the potency of the drug expires if the date is available from the manufacturer or principal labeler;
- (8) The number of refills available, if any; and
- (9) Specific directions for the drug’s use; provided that if the specific directions for use are too lengthy for inclusion on the label, the notation “take according to written instructions” may be used if separate written instructions for use are actually issued with the drug by the practitioner or the pharmacist, but in no event shall the notation “take as directed”, referring to oral instructions, be considered acceptable.

If any prescription for a drug does not indicate the number of times it may be refilled, if any, the pharmacist shall not refill that prescription unless subsequently authorized to do so by the practitioner. The act of dispensing a prescription drug other than a professional sample or medical oxygen contrary to this subsection shall be deemed to be an act that results in a drug being misbranded while held for sale.

(b) In addition to the requirements enumerated in subsection (a), a prescription drug shall be dispensed only:

- (1) By a pharmacist ~~[or a pharmacy intern]~~ pursuant to a valid prescription;
- (2) By a medical oxygen distributor pursuant to a [valid] prescription or [valid] certificate of medical necessity; provided that the drug to be dispensed is medical oxygen; or
- (3) By a practitioner to an ultimate user; provided that:
 - (A) The practitioner shall inform the patient, prior to dispensing any drug other than a professional sample, that the patient may have a written, orally ordered, or electronically transmitted or conveyed prescription directed to a pharmacy or a medical oxygen distributor of the patient’s own choice;

~~[(A)]~~ (B) The practitioner shall promptly record in the practitioner’s records:

- (i) The prescription in full;
- (ii) The name, strength, and quantity of the drug, and specific directions for the drug’s use;
- (iii) The date the drug was dispensed; and

- (iv) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed; [and]¹

[(B)] (C) The records described in subparagraph [(A)] (B) shall be subject to the inspection of the department or its agents at all times[-]; and

(D) No undisclosed rebate, refund, commission, preference, discount, or other consideration, whether in the form of money or otherwise, has been offered to the practitioner as compensation or inducement to dispense or prescribe any specific drug in preference to other drugs that might be used for the identical therapeutic indication.

(c) A [valid] prescription may be communicated in writing, orally² [by facsimile,] or by electronic transmission, and shall include the following information:

[(1) The date of issuance;

(2)] (1) The authorization of the practitioner noted as follows:

(A) Written prescriptions shall include the original signature of the practitioner;

(B) Oral prescriptions shall be promptly [~~reduced to writing~~] recorded by the pharmacist[, pharmacist intern,] or medical oxygen distributor[;] and shall include the practitioner's oral code designation; and

(C) [~~Facsimile or electronic~~] Electronic prescriptions shall be irrefutably traceable to the prescribing practitioner[;] by a recognizable and unique practitioner identifier such as:

(i) A bitmap or graphic image of the prescriber's handwritten signature and the prescriber's oral code designation (or license number or other identifier if the prescriber is an out-of-state practitioner);

(ii) An electronic signature; or

(iii) A digital signature;

or by other means as approved by the director;

(2) The date of issuance;

(3) The practitioner's name [~~and business address;~~], business telephone number, and business address, unless the practitioner is otherwise uniquely identified and the pharmacy or medical oxygen distributor dispensing the prescription has the prescriber's contact information on file accessible within the dispensing area;

(4) The name, strength, and quantity of the drug to be dispensed, and specific directions for the drug's use;

(5) The name and address of the person for whom the prescription was written or the name of the owner of the animal for which the drug was prescribed, unless the pharmacy or medical oxygen distributor [~~filling~~] dispensing the prescription has the address on file[;] accessible within the dispensing area;

(6) The room number and route of administration, if the patient is in an institutional facility; and

(7) The number of allowable refills, if the prescription is refillable. If the number of refills authorized by the practitioner is indicated using the terms "as needed" or "prn", the prescription may be refilled up to twelve months from the date the original prescription was written. After the twelve-month period, the "as needed" or "prn" prescription may be refilled for a subsequent three-month period; provided:

- (A) The prescription is refilled only once during the three-month period;
 - (B) The refill does not exceed a thirty-day supply of the drug;
 - (C) The refill does not provide any amount of the drug fifteen months beyond the date the original prescription was written;
 - (D) In the case of medical oxygen, the duration of therapy indicated on a [valid] certificate of medical necessity shall supersede any limitations or restrictions on refilling; and
 - (E) ~~[The provisions of subparagraphs]~~ Subparagraphs (A) to (D) shall apply only to pharmacies and medical oxygen distributors practicing in the State.
- (d) Any ~~[written or oral]~~ prescription may be refilled by the pharmacy and a ~~[written or oral]~~ prescription for medical oxygen may be refilled by the medical oxygen distributor if that refilling is authorized by the practitioner either:
- (1) In the original prescription; or
 - (2) By oral or electronic order, which shall be ~~[reduced]~~ promptly ~~[to writing]~~ recorded and filed by the receiving pharmacist~~[-pharmacy intern]~~ or medical oxygen distributor.
- (e) Prescription information may be transferred between pharmacies, between a pharmacy and a medical oxygen distributor, and between medical oxygen distributors for dispensing purposes; provided that:
- (1) Medical oxygen distributors may communicate or receive prescription information related only to the dispensing of medical oxygen;
 - (2) The prescription information includes all elements of subsection (c)(2) to (7) and the following:
 - (A) Authentication of the transmitting pharmacy or medical oxygen distributor who is providing the prescription information including the following:
 - (i) The name of the pharmacist or medical oxygen distributor providing the information;
 - (ii) The name, telephone number, and address or location of the pharmacy or medical oxygen distributor firm providing the information; and
 - (iii) The serial number, prescription number, control number, or other unique identifier of the prescription record from which the information was transferred;
 - (B) The date the original prescription was issued;
 - (C) The date of the last refill; and
 - (D) The number of refills remaining.
- ~~[(e)]~~ (f) For the purposes of this section, a “prescription drug” is a drug intended for use by a person that:
- (1) Is a habit forming drug to which section 328-15(4) applies;
 - (2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner; or
 - (3) Is limited by an approved application under section 505 of the Federal Act, or section 328-17, to use under the professional supervision of a practitioner.
- ~~[(f)]~~ (g) Any drug other than medical oxygen dispensed ~~[by filling or refilling]~~ pursuant to a prescription ~~[of a practitioner]~~ shall be exempt from the requirements of section 328-15 (except paragraphs (1), (9), (11), and (12), and the packaging requirements of paragraphs (7) and (8)), if the drug bears a label containing:
- (1) The name and address of the pharmacy;

- (2) The serial number and the date of the prescription or of its filling;
- (3) The name of the practitioner; ~~and~~
- (4) ~~If stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription.~~
- (4) The name of the patient;
- (5) The directions for use; and
- (6) Any cautionary statements contained in the prescription.

This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (a), (b), (c), or (d).

~~[(g)]~~ (h) The director of health, by rule, may remove drugs subject to sections 328-15(4) and 328-17 from the requirements of subsection (a), (b), (c), or (d) when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the Federal Act by regulations issued thereunder may also, by rules issued by the director, be removed from the requirements of subsection (a), (b), (c), or (d).

~~[(h)]~~ (i) A drug that is subject to ~~[subsection]~~ subsections (a), (b), (c), ~~[or]~~ and (d) shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal law prohibits dispensing without prescription", ~~[or]~~ "Caution: State law prohibits dispensing without prescription" ~~[-], or "Rx only"~~. A drug to which ~~[subsection]~~ subsections (a), (b), (c), ~~[or]~~ and (d) ~~[does]~~ do not apply ~~[-]~~ shall be deemed to be misbranded if, at any time prior to dispensing, its label bears ~~[the]~~ a caution statement quoted in the preceding sentence.

~~[(i)]~~ (j) Nothing in this section shall be construed to relieve any person from any requirement, prescribed by or under authority of law with respect to drugs now included or that may hereafter be included within the classifications of controlled substances as defined in the applicable federal and state laws relating to controlled substances.

~~[(j)]~~ (k) Oral code numbers or designations shall be issued by the department of public safety, pursuant to applicable laws and rules.

(l) Any person who transmits, maintains, or receives any prescription or prescription refill orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein."

SECTION 4. Section 328-17.6, Hawaii Revised Statutes, is amended to read as follows:

"§328-17.6 Out-of-state prescriptions. (a) An out-of-state practitioner may issue a written ~~[or]~~, oral, or electronic prescription within the confines of the practitioner's license and in accordance with Hawaii laws and rules. An oral prescription shall be personally communicated by the out-of-state practitioner and received only by a pharmacist; provided that a medical oxygen order may be received by a medical oxygen distributor.

(b) An out-of-state pharmacy may transfer prescription information for refilling purposes and an out-of-state medical oxygen distributor may transfer prescription information for the purpose of refilling a medical oxygen order.

(c) Any pharmacist or medical oxygen distributor who fills or refills a prescription from an out-of-state practitioner shall:

- (1) Note the following on the prescription record: the out-of-state practitioner's full name, address, and telephone number;
- (2) Be responsible for validating and verifying the practitioner's prescriptive authority by virtue of a valid out-of-state license, a Drug Enforce-

ment Administration registration number, or other measures as appropriate; and

- (3) Demand proper identification from the person whose name appears on the prescription prior to filling the prescription, in addition to complying with any identification procedures established by the department for filling and refilling an out-of-state prescription.

(d) Before refilling a transferred out-of-state prescription, a pharmacist or medical oxygen distributor shall:

- (1) Advise the person whose name appears on the prescription that the prescription on file at the originating out-of-state pharmacy or medical oxygen distributor may be canceled; and
- (2) Record all information required to be on a prescription, including:
 - (A) The date of issuance of the original prescription;
 - (B) The number of refills authorized on the original prescription;
 - (C) The date the original prescription was dispensed;
 - (D) The number of valid refills remaining and the date of the last refill;
 - (E) The out-of-state pharmacy's or out-of-state medical oxygen distributor's name, telephone number, and address, and the original prescription number or control number from which the prescription information was transferred; and
 - (F) The name of the transferor pharmacist or the medical oxygen distributor's agent.

(e) A pharmacist or medical oxygen distributor who fills or refills an out-of-state prescription shall be responsible if the prescription is not written in the form prescribed by Hawaii laws and rules.

(f) An out-of-state prescription record shall ~~[be appropriately identified as "Out-of-State Filled" or "Out-of-State Refilled", and shall]~~ state the date of filling or refilling and the local address of the person whose name appears on the prescription.

(g) All transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling. Filled out-of-state prescriptions shall be kept ~~[in a special]~~ on file for five years. The department may establish additional recordkeeping and reporting procedures for filled and refilled out-of-state prescriptions.

~~(h) [This section shall not apply to prescriptions for controlled substances and habit-forming drugs.]~~ Nothing in this section shall be construed to relieve any person from any requirement, prescribed by or under authority of law with respect to drugs now included or that may hereafter be included within the classifications of controlled substances as defined in the applicable federal and state laws relating to controlled substances including but not limited to chapter 329.

SECTION 5. Section 328-17.7, Hawaii Revised Statutes, is amended to read as follows:

"§328-17.7 Record of prescriptions. (a) Every practitioner, pharmacist, or medical oxygen distributor, who compounds, sells, or delivers any prescribed drug to a patient or a patient's agent shall maintain records that identify:

- (1) The specific drug product;
- ~~(2) The prescribing practitioner;~~
- ~~(3) The patient;~~
- ~~(4) The date of prescribing or filling; and~~
- ~~(5) The name of the practitioner, pharmacist, or medical oxygen distributor dispensing the drug.]~~
- (2) The quantity of the drug;

- (3) Directions for use;
- (4) The number of allowable refills;
- (5) The date of initial dispensing and the dates of all refilling;
- (6) The date of any transfer of the prescription;
- (7) The name, business address, and telephone number of the recipient pharmacist or medical oxygen distributor for any transfer of prescription;
- (8) The prescribing practitioner, including name, business address, and telephone number;
- (9) The format (oral, written, or electronic) in which the prescription was received;
- (10) The patient, including name, address, and telephone number;
- (11) The date of prescribing; and
- (12) The name of the practitioner, pharmacist, or medical oxygen distributor dispensing the drug.

~~[No prescription shall be compounded, sold, or delivered unless the name of the person compounding, selling, or delivering the same, or the name of the practitioner prescribing the same, is appended to the prescription in full, and every prescription shall be preserved for a period of not less than five years.]~~ Every prescription dispensed shall have the name of the pharmacist, dispensing practitioner, or medical oxygen distributor responsible for the dispensing appended to the prescription record, and every prescription record shall be preserved and legible for a period of not less than five years. The prescription records shall be subject at all times to the inspection of the director of health or the director's agent.

(b) Prescription records may be electronically maintained using an appropriate prescription information processing system; provided that:

- (1) There are procedures to maintain the records, including but not limited to auxiliary procedures for backing up files, computer downtime, and the protection of patient confidentiality; and
- (2) Upon request the prescription records, or a subset thereof, shall be provided to the director or the director's agent, in a form specified by the director, within forty-eight hours.

(c) Prescription records shall be maintained electronically or manually such that the information is readily retrievable during the pharmacy's normal operating hours."

SECTION 6. Act 304, Session Laws of Hawaii 1997, is repealed.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 8. This Act shall take effect upon its approval.

(Approved May 18, 2001.)

Notes

- 1. So in original.
- 2. Prior to amendment ":", " appeared here.
- 3. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to General Excise Tax on Nonprofit Organizations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-23, Hawaii Revised Statutes, is amended to read as follows:

“§237-23 Exemptions, persons exempt, applications for exemption. (a)
This chapter shall not apply to the following persons:

- (1) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
¹Public utilities owned and operated by the State or any county or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under chapter 201G, part IV;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and

(C) As used in this paragraph, “section 521 cooperatives” mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers’ cooperatives from tax) of the Internal Revenue Code of 1986, as amended;

- (8) Persons affected with Hansen’s disease and kokuas, with respect to business within the county of Kalawao;
 - (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons); and
 - (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.
- (b) The exemptions enumerated in subsection (a)(3) to (6) shall apply only:
- (1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; ~~and~~
 - (2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
 - (3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanatoria as such, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.
- (c) ~~In order to~~ To obtain allowance of an exemption:
- (1) A person under subsection (a)(3) to (6), who has received or applied for recognition of tax exempt status under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a group exemption letter under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and
 - (2) All other persons under subsection (a)(3) to (6) shall file an application for exemption [shall be filed] in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and such particular facts as the department may require, to which shall be attached such records, papers, and other information as the department may prescribe. [The]
- (d) For all persons, the statement registering the person with the department or application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption, no further statement or application therefor need be filed unless there is a material change in the facts. In the event of disallowance of the

exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the \$20 already paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter, no further fee shall be required for registration under this section.

[(d)] (e) The department for good cause may extend the time for registration or the time for filing an application for exemption~~[-, but the extension or extensions shall not aggregate more than a total of two months].~~”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

Note

1. So in original.

ACT 126

H.B. NO. 144

A Bill for an Act Relating to Kaho‘olawe Island Reserve.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 6K-6, Hawaii Revised Statutes, is amended to read as follows:

“§6K-6 Responsibilities and duties of the commission. The general administration of the island reserve shall rest with the commission. In carrying out its duties and responsibilities, the commission:

- (1) Shall establish criteria, policies, and controls for permissible uses within the island reserve;
- (2) Shall approve all contracts for services and rules pertaining to the island reserve;
- (3) Shall provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;
- (4) Shall provide advice to the office of planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho‘olawe;
- (5) May enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section 6K-3;
- (6) Shall carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to dispositions and approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning dispositions and approvals pertaining to the island reserve are transferred to the commission;
- (7) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone dispositions and approvals pertaining to the island reserve are transferred to the commission;

- (8) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the island burial councils and the department with regard to proper treatment of burial sites and human skeletal remains found in the island reserve;
- (9) Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions; ~~and~~
- (10) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this chapter as the commission deems reasonable and proper for the effective administration of this chapter~~[-]; and~~
- (11) May solicit and accept grants, donations, and contributions for deposit into the Kaho‘olawe rehabilitation trust fund to support the purposes of this chapter.”

SECTION 2. Section 6K-9.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§6K-9.5]]~~**[Rehabilitation] Kaho‘olawe rehabilitation trust fund.** (a) There is created in the state treasury a trust fund to be designated as the Kaho‘olawe rehabilitation trust fund to be administered by the department with the prior approval of the commission. Subject to Public Law 103-139, and this chapter~~[-, ah]~~:

- (1) All moneys received from the federal government for the rehabilitation and environmental restoration of the island of Kaho‘olawe~~[-, any]~~ or other purposes consistent with this chapter;
- (2) Any moneys appropriated by the legislature to the trust fund~~[-];~~
- (3) Any moneys received from grants, donations, or the proceeds from contributions; and ~~[the]~~
- (4) The interest or return on investments earned from moneys in the trust fund,

shall be deposited in the trust fund and shall be used to fulfill the purposes of this chapter.

(b) The commission may use moneys in the trust fund to carry out the purposes of this chapter, including hiring employees, specialists, and consultants necessary to complete projects related to the purposes of this chapter.

(c) Moneys deposited into or appropriated to the trust fund shall remain available until they are obligated or until the trust fund is ~~[repealed.]~~ terminated.

(d) ~~[The trust fund shall be repealed on July 1, 2005. The commission shall transfer to the credit of the state general fund, all unexpended or unencumbered balances remaining in the trust fund prior to June 30, 2005;] If the trust fund is terminated, all funds shall be transferred to the general fund; provided that all unexpended or unencumbered balances [of federal moneys] shall be disbursed in accordance with [applicable federal law.] any requirements set by funding sources and for purposes consistent with this chapter.~~

(e) The commission shall submit an annual report on the status of the Kaho‘olawe rehabilitation trust fund to the legislature, no later than twenty days prior to the convening of each regular session of the legislature. The annual report shall include the total number of and amount of grants, donations, and contributions received and balances remaining on June 30 of each year.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

ACT 127

H.B. NO. 152

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the expedited sentencing program (program) was enacted as a pilot project in 1993 by Act 316, Session Laws of Hawaii 1993. The program focuses on the needs of the child victim in intra-familial child sex abuse cases, while providing safeguards for the community, and reducing court and prison-related expenses. The program minimizes the possibility of revictimizing the child victim by:

- (1) Allowing the child to remain in the family home instead of removing the child to foster care as the offender is required to leave or remain away from the family home;
- (2) Eliminating the need for the child to testify in family court;
- (3) Requiring that the offender plead guilty; and
- (4) Requiring treatment and supervision for all members of the child's family to ensure protection of the child and the community.

Program benefits to the community include the potential fiscal savings associated with reduction of trials and prison time because the offender must plead guilty to all of the charges. To qualify for the program, an offender assessment must determine that the offender is "safe to probate." If it is deemed that the offender is "safe to probate," the offender must agree to comply with all of the conditions of the program. The offender then serves up to one year in prison before being placed on probation for either ten or twenty years, depending on the severity of the offense. The offender must also immediately participate in court-approved sex offender treatment until clinically discharged. Treatment is paid for by the offender unless it is determined that the offender is not financially capable. If the offender violates the probation terms, the offender serves a full ten- or twenty-year prison term.

The legislature further finds that the program has been in operation for seven years. The counties implementing the program have encountered no substantive problems. The legislature recognizes, however, that the continued success of the program depends on the availability of resources for probation services and offender assessment and treatment.

The purpose of this Act is to remove the program's "pilot project" status by extending the sunset date by five years, repealing the annual reporting requirement, and preventing the inadvertent repeal of probation laws established in connection with the expedited sentencing program.

SECTION 2. Section 706-606.3, Hawaii Revised Statutes, is amended to read as follows:

"[§706-606.3] Expedited sentencing program. (1) A person who has committed intra-family sexual assault may be considered for the expedited sentencing program in accordance with this section. As used in this section, "intra-family" sexual assault means any criminal offense of felony sexual assault under section 707-730, 707-731, or 707-732, or [of] incest, as defined in section 707-741, in which the victim of the offense is related to the [alleged-offender] defendant by consan-

guinity or marriage, or ~~[residing]~~ resides in the same dwelling unit as the ~~[alleged offender]~~ defendant, and the victim was, at the time of the sexual assault, under the age of eighteen.

(2) The police department of the county in which the sexual assault took place or any other appropriate investigative law enforcement agency shall confer with the appropriate prosecuting authority. If the prosecuting authority determines that it ~~[would be]~~ is appropriate to provide notice of the expedited sentencing program to the ~~[alleged offender,]~~ defendant, the police department or other appropriate investigative law enforcement agency shall give ~~[an alleged offender]~~ the defendant written notice of the existence of the expedited sentencing program provided in this section. The ~~[providing of the notice]~~ notice provision shall not be a prerequisite to ~~[the taking of a statement from an alleged offender, nor in any manner]~~ questioning the defendant. The notice provision shall ~~[it commit a]~~ not obligate the prosecuting authority to [issuing] issue a statement of [no objection to the alleged offender being considered] “no objection” when considering the defendant for the expedited sentencing program.

(3) The written notice shall state:

“YOU ARE ADVISED TO SEEK LEGAL COUNSEL IMMEDIATELY ~~[AND,]~~. IF YOU CANNOT AFFORD ~~[ONE, TO]~~ PRIVATE COUNSEL, CONTACT THE OFFICE OF THE PUBLIC DEFENDER. FAILURE TO CONTACT AN ATTORNEY MAY ~~[KEEP YOU OUT OF]~~ DISQUALIFY YOU FROM THIS PROGRAM. A copy of section 706-606.3, Hawaii Revised Statutes, is attached to this notice. You are under investigation for a felony sexual assault against a minor. Upon completion of this investigation, if there is sufficient basis to believe that you have committed a sexual assault, the case will be referred to the appropriate prosecuting authority for review and possible institution of criminal charges. Hawaii law provides for a range of ordinary prison sentences for felony sexual assault ranging from five years up to twenty years ~~[imprisonment]~~, or ~~[even]~~ life imprisonment, depending upon the offense. However, section 706-606.3, Hawaii Revised Statutes, provides that a person who commits a sexual assault upon a minor but who admits guilt, cooperates with the prosecuting authority, and participates in appropriate assessment and treatment may be considered for the expedited sentencing program. A person who is sentenced in accordance with the expedited sentencing program may be sentenced to a term of probation~~;~~ which may be revoked. Probation may be revoked, however, for failure to comply with the terms of the probation pursuant to section 706-625. To qualify for consideration for the expedited sentencing program, your legal counsel first must request from the office of the prosecuting authority named in this notice a written statement as to whether that office has any objection to your being considered for the expedited sentencing program. THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS YOUR LEGAL COUNSEL HAS RECEIVED A WRITTEN STATEMENT THAT THE APPROPRIATE PROSECUTING AUTHORITY HAS NO OBJECTION TO YOUR BEING CONSIDERED FOR THE EXPEDITED SENTENCING PROGRAM AND THE REQUEST FOR THAT WRITTEN STATEMENT WAS MADE WITHIN FOURTEEN DAYS OF YOUR RECEIPT OF THIS NOTICE. FURTHER, THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS, ~~[AFTER]~~ ONCE YOUR LEGAL COUNSEL HAS RECEIVED THIS NOTICE, YOU HAVE MADE A GOOD FAITH EFFORT TO AVOID THE NECESSITY ~~[FOR]~~ OF THE CHILD

BEING REMOVED FROM THE FAMILY HOME, INCLUDING BUT NOT LIMITED TO MOVING AND REMAINING OUT OF THE FAMILY HOME UNTIL OTHERWISE ORDERED BY THE COURT.”

The written notice also shall provide:

(a) Instructions on how to contact the appropriate prosecuting authority, including any necessary addresses and ~~[phone]~~ telephone numbers; and

(b) The name of the person delivering the notice and the date it was given to the alleged offender.

(4) A defendant shall not be considered by the court for the expedited sentencing program under this section unless the defendant’s legal counsel ~~[requested,]~~ requests within fourteen days of the defendant’s receipt of the written notice, ~~that the defendant be considered for the expedited sentencing program,~~ and ~~defendant’s counsel~~ subsequently ~~[received]~~ receives a written statement from the appropriate prosecuting authority stating that ~~[office-has]~~ it ~~has~~ no objection to the defendant being considered for the expedited sentencing program in accordance with this section ~~[and further, that it is established that]~~. Additionally, each of the following criteria ~~[has-been]~~ shall be met:

- (a) After receiving the required written notice, the defendant ~~[has]~~ made a good faith effort to avoid the necessity ~~[for]~~ of the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;
- (b) The victim of the sexual assault was under the age of eighteen ~~[at the time of the commission of]~~ when the sexual assault~~[:]~~ was committed;
- (c) The defendant ~~[has not received a prior sentence]~~ was never previously sentenced under this section and has ~~[not received a prior conviction for]~~ never been convicted of felony sexual assault under section 707-730, 707-731, or 707-732, or ~~[of]~~ incest ~~[, as defined in]~~ under section 707-741;
- (d) A guardian ad litem appointed in a family court proceeding, or a person assigned by the Children’s Advocacy Center to ~~[perform the function of a]~~ serve as guardian ad litem ~~[has agreed]~~, agreed that it would be in the best interest of the child for the ~~[alleged-offender]~~ defendant to be considered for the expedited sentencing program. ~~[The]~~ No prosecuting authority shall ~~[not]~~ issue a statement of no objection without this prior agreement; and
- (e) The defendant has complied with the requirements for consideration for the expedited sentencing program as established in subsection (6); provided that at sentencing the prosecuting authority may oppose ~~[at sentencing]~~ the defendant’s participation in the expedited sentencing program~~[:]~~ if the prosecuting authority determines that the defendant has failed to satisfy the criteria under subsection (6).

(5) The prosecuting authority and the child’s guardian ad litem ~~[or a person assigned to perform the function of a guardian ad litem]~~ may consult with any other appropriate agency or individual to assist in a decision whether to provide a written statement of ~~[no objection]~~ “no objection” prior to the defendant being considered for sentencing under the expedited sentencing program.

(6) Within seven business days of receipt of the written notice stating that the appropriate prosecuting authority has no objection to the ~~[alleged-offender]~~ defendant being considered for the expedited sentencing program in accordance with this section, unless the prosecuting authority waives compliance with the time limit, the ~~[alleged-offender]~~ defendant shall ~~[comply with each of the following requirements]:~~

- (a) Continue to make a good faith effort to avoid the necessity ~~[for]~~ of the child being removed from the family home, including but not limited to

moving and remaining out of the family home until otherwise ordered by the court;

- (b) Admit to commission of the sexual assault to the police department of the county in which the assault took place or other appropriate investigative law enforcement agency;
- (c) Provide to the appropriate prosecuting authority a written waiver of indictment and preliminary hearing for any criminal charges arising from the sexual assault; and
- (d) Enter a voluntary plea of guilty to the charge or charges alleged upon or following arraignment.

(7) Notwithstanding sections 706-606.5, 706-620, 706-659, 706-660, and 706-660.2, a defendant ~~[who may be]~~ considered for the expedited sentencing program ~~[in accordance with]~~ under this section ~~[as of the date]~~ when sentence is imposed may be sentenced to a term of probation ~~[upon the conditions specified in]~~ pursuant to section 706-624; provided that~~[-]~~ if the defendant is sentenced to a term of imprisonment~~[which may be up to one year,]~~ as a condition of probation, the term of imprisonment may allow for the defendant's retention of employment.

(8) The term of probation under this section shall be as follows:

- (a) For an offense under section 707-730 or 707-731, twenty years; and
- (b) For an offense under section 707-732 or 707-741, ten years.

(9) In addition to the conditions of probation provided under section 706-624, a sentence under this section shall include that the defendant ~~[comply with the following conditions:]~~ shall:

- (a) ~~[To participate]~~ Participate in court approved, appropriate sex offender assessment and treatment~~[-]~~ that ~~[must]~~ shall conform to the guidelines developed by the adult probation division of the appropriate circuit court, until clinically discharged; provided that ~~[the]~~:
 - (i) The prosecuting authority shall be provided notice and the opportunity for a hearing prior to any authorization for treatment discontinuance ~~[being allowed]~~ by the court or the adult probation division; ~~[provided further that the]~~
 - (ii) The defendant shall pay for the cost of the assessment and treatment to the extent that the defendant has the ability to do so; and ~~[provided further that a]~~
 - (iii) A lack of assessment and treatment resources shall result in the defendant not being considered for the expedited sentencing program;
- (b) ~~[To provide]~~ Provide a written waiver of confidentiality for any assessment, treatment, counseling, therapy, or other program ordered as a condition of probation;
- (c) ~~[To comply]~~ Comply with all orders entered in a proceeding pursuant to chapter 587; and
- (d) ~~[Any]~~ Comply with other condition deemed by the court to be reasonably necessary for the protection of the victim of the sexual assault or the rehabilitation of the defendant.

(10) There shall be a rebuttable presumption in favor of the court imposing a sentence in accordance with this section ~~[on a person who is provided a]~~ when a defendant qualifies for the expedited sentencing program, and written notice of ~~[no objection]~~ "no objection" is issued by the prosecuting authority ~~[and who qualifies for the expedited sentencing program]~~. The court shall provide written findings of fact setting forth specific reasons ~~[that justified]~~ justifying imposition of a sentence ~~[which]~~ that is not in accordance with this section.

~~[(11) The prosecuting authority shall record each request received pursuant to this section and shall report the requests and the action taken to the Children's~~

~~Advocacy Center in each county. The Children's Advocacy Center Interagency Advisory Committee in each county shall monitor the expedited sentencing program. The county committees also shall identify problems relating to the expedited sentencing program within the civil and criminal legal processes and propose solutions. The state director of the Children's Advocacy Center shall compile the information from each county committee and submit a report to the appropriate legislative committees on or before January 15 of each year.]''~~

SECTION 3. Act 316, Session Laws of Hawaii 1993, as amended by Act 157, Session Laws of Hawaii 1995, is amended by amending section 6 to read as follows:

~~''SECTION 6. This Act shall take effect upon its approval [and shall be repealed on June 30, 2001].''~~

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003 to support domestic violence programs.

The sums appropriated shall be expended by the judiciary for the purpose of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2001.

(Approved May 22, 2001.)

ACT 128

H.B. NO. 594

A Bill for an Act Relating to Continuing Education Courses and Course Providers for Insurance Licensees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

“(a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance\$900
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing\$1,500
 - (B) Issuance of solicitation permit\$150
- (3) General agent's license:
 - (A) Issuance, regular license\$75
 - (B) Issuance, temporary license\$75
- (4) Subagent's license:
 - (A) Issuance, regular license\$75
 - (B) Issuance, temporary license\$75
- (5) Nonresident agent's or broker's license: Issuance\$60
- (6) Solicitor's license: Issuance\$60
- (7) Independent adjuster's license: Issuance\$60

- (8) Public adjuster's license: Issuance\$60
- (9) Workers' compensation claims adjuster's limited license: Issuance \$60
- (10) Independent bill reviewer's license: Issuance\$80
- (11) Limited license issued pursuant to section 431:9-214(c): Issuance ..\$60
- (12) Managing general agent's license: Issuance\$75
- (13) Reinsurance intermediary's license: Issuance\$75
- (14) Surplus line broker's license: Issuance\$150
- (15) Service contract provider's registration: Issuance\$75
- (16) Approved course provider certificate: Issuance\$100
- (17) Approved continuing education course certificate: Issuance\$30
- [(46)] (18) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority [~~or a license~~], license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$75 per year for all services (including extension of the license) for a regularly licensed general agent;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed subagent;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed nonresident agent or broker;
- (5) \$30 per year for all services (including extension of the license) for a regularly licensed solicitor;
- (6) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (7) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (8) \$45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
- (9) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (10) \$45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c);
- (11) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (12) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (13) \$45 per year for all services (including extension of the license) for a licensed surplus line broker;
- (14) \$75 per year for all services (including renewal of registration) for a service contract provider; [~~and~~]
- (15) \$65 per year for all services (including extension of the certificate) for an approved course provider; and
- (16) \$20 per year for all services (including extension of the certificate) for an approved continuing education course.

[(45)] The services referred to in paragraphs (1) to [(44)]¹ (16) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

(c) The commissioner shall notify the holder of [~~the~~] a certificate of authority issued under article 3 or the license or other certificate issued under article 9 by written notice at least thirty days prior to the extension date of [~~such certificate or~~]

~~license.] the certificate of authority, license, or other certificate.~~ If the fee is not paid before or on the extension date, the fee ~~[will]~~ shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority ~~[or license], license, or other certificate~~ and shall not reissue, remove the suspension of, or reactivate the certificate of authority ~~[or license], license, or other certificate~~ until the fee and penalty have been paid.”

SECTION 2. Section 431:9-301, Hawaii Revised Statutes, is amended by amending the definitions of “approved continuing education course” and “approved course provider” to read as follows:

““Approved continuing education course” means a course that has been approved by the commissioner following receipt of recommendations from [various] insurance professionals[-] and that has paid all fees under section 431:7-101.

“Approved course provider” means an organization or individual ~~[that offers a continuing education course and has been approved by the commissioner.]~~ approved by the commissioner that has paid all fees under section 431:7-101.”

SECTION 3. Section 431:9-302, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. ~~[The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.]~~ The approved course provider shall submit course completion information by electronic means to the insurance division within forty-five days after the course is completed or the competency examination is scored.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 22, 2001.)

Note

1. So in original.

ACT 129

H.B. NO. 600

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER CONTROL SHARE ACQUISITIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Acquiring person” means a person who is required to deliver an information statement.

“Beneficial ownership” shall be determined pursuant to section 13 of the federal Securities Exchange Act of 1934 and the rules adopted thereunder, as amended.

“Control share acquisition” means an acquisition of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person of a new range of voting power specified in this chapter, but does not include an acquisition:

- (1) Before or pursuant to an agreement entered into before July 1, 1987;
- (2) By a donee pursuant to an inter vivos gift not made to avoid this chapter or by a distributee as defined in chapter 560;
- (3) Pursuant to a security agreement not created to avoid this chapter;
- (4) Pursuant to a merger or share exchange executed in accordance with applicable law, if the issuing public corporation is a party to the plan of merger or share exchange;
- (5) From the issuing public corporation;
- (6) That is approved by resolution of the board of directors of the issuing public corporation before the acquisition occurs; or
- (7) That the board of directors of the issuing public corporation determines, by resolution before the acquisition occurs, is not a control share acquisition.

“Issuing public corporation” means a corporation incorporated in this State with at least one hundred shareholders and having its principal place of business or substantial assets located in this State.

§ -2 **Control share acquisitions.** (a) Unless otherwise expressly provided in the articles of incorporation of an issuing public corporation, this section applies to a control share acquisition.

(b) All shares acquired by an acquiring person in violation of subsection (e) shall be denied voting rights for one year after acquisition. The shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation, during the one-year period, shall have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ending prior to the date of the call for redemption. The redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

(c) A person proposing to make a control share acquisition shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

- (1) The identity of the person;
- (2) A reference that the statement is made under this section;
- (3) The number of shares of the issuing public corporation beneficially owned by the person;
- (4) A specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:
 - (A) At least ten per cent but less than twenty per cent;
 - (B) At least twenty per cent but less than thirty per cent;
 - (C) At least thirty per cent but less than forty per cent;

- (D) At least forty per cent but less than a majority; or
- (E) At least a majority; and
- (5) The terms of the proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition; any plans or proposals of the acquiring person to liquidate the issuing public corporation, sell all or substantially all of its assets, or merge it or exchange its shares with any other person, change the location of its principal executive office or of a material portion of its business activities, change materially its management or policies of employment, alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management, or personnel, and such other information which would affect the decision of a shareholder with respect to voting on the proposed control share acquisition.

(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 414-122, to vote on the proposed control share acquisition. The meeting shall be held no later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date and no sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement. The notice of the meeting at a minimum shall be accompanied by a copy of the information statement, and a statement disclosing that the issuing public company recommends:

- (1) Acceptance of;
- (2) Expresses no opinion and is remaining neutral toward; or
- (3) Is unable to take a position with respect to;

the proposed control share acquisition.

The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.

(e) The acquiring person may consummate the proposed control share acquisition if and only if both the following occur:

- (1) The proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote which are not beneficially owned by the acquiring person. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and
- (2) The proposed control share acquisition is consummated within one hundred eighty days after shareholder approval.”

SECTION 2. Chapter 414, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“[[‘]CHAPTER 414[‘]]
HAWAII [REVISED] BUSINESS CORPORATION ACT”**

SECTION 3. Section 414-1, Hawaii Revised Statutes, is amended to read as follows:

“[[§414-1[‘]] **Short title.** This chapter shall be known and may be cited as the “Hawaii [Revised] Business Corporation Act”.”

SECTION 4. Section 414-3, Hawaii Revised Statutes, is amended by amending the definitions of “authorized shares”, “entity”, and “individual” to read as follows:

““Authorized shares” means the shares of all classes a domestic [or foreign] corporation is authorized to issue.

“Entity” includes [corporation] domestic and foreign [corporation;] corporations; domestic professional corporations; domestic and foreign limited liability companies; domestic and foreign not-for-profit [corporation;] corporations; [profit and not-for-profit unincorporated association;] business [trust, estate, partnership, trust, and] trusts; estates; domestic and foreign partnerships; domestic and foreign limited partnerships; domestic and foreign limited liability partnerships; trusts; two or more persons having a joint or common economic interest; and state, [United States;] federal, and foreign [government;] governments.

“Individual” [includes] means a natural person or the estate of an incompetent or deceased individual.”

SECTION 5. Section 414-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notice [may be] is effective if communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio[;], television, or other form of public broadcast communication.”

SECTION 6. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of [existence] good standing required of foreign corporations need not be in English if accompanied by [a reasonably authenticated] an English translation[.] under oath of the translator.”

SECTION 7. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The person executing the document shall sign it and [state] print beneath or opposite that person’s signature the person’s name and the capacity in which the person signs. The document may but need not contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary; or
- (3) An acknowledgment, verification, or proof.”

SECTION 8. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) The document must be delivered to the office of the department director for filing and must be accompanied by [one exact or conformed copy (except as

provided in sections 414-63 and 414-439);] the correct filing fee[;] and any penalty required by this chapter.”

SECTION 9. Section 414-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The department director may prescribe and furnish on request forms for:
- (1) An application for a certificate of [existence;] good standing;
 - (2) A foreign corporation’s application for a certificate of authority to transact business in this State;
 - (3) A foreign corporation’s application for a certificate of withdrawal; and
 - (4) The annual report.

If the department director so requires, use of these forms is mandatory.”

SECTION 10. Section 414-13, Hawaii Revised Statutes, is amended to read as follows:

“[[§414-13]] **Filing, service, and copying fees.** (a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of incorporation, \$50;
- (4) Articles of conversion[;] or merger, [~~or consolidation,~~] \$200;
- (5) Articles of merger (subsidiary corporation), \$100;
- (6) Articles of dissolution, \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- (8) Agent’s statement of change of registered office, \$50 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of two hundred;
- (9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, \$50;
- (10) Application for a certificate of authority, \$100;
- (11) Application for a certificate of withdrawal, \$50;
- (12) Reservation of corporate name, \$20;
- (13) Transfer of reservation of corporate name, \$20;
- (14) Good standing certificate, \$25;
- (15) Special handling fee for review of corporation documents, excluding articles of conversion[;] or merger, [~~or consolidation,~~] \$50;
- (16) Special handling fee for review of articles of conversion[;] or merger, [~~or consolidation,~~] \$150;
- (17) Special handling fee for certificates issued by the department, [\$20] \$25 per certificate; and
- (18) Special handling fee for certification of documents, [~~\$1 per page,~~] \$25.

(b) All special handling fees shall be credited to the special fund established for use by the department of commerce and consumer affairs in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.

(c) The department director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91.

(d) The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ~~[25 cents per page and \$10]~~ \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.”

SECTION 11. Section 414-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Articles of dissolution and articles of merger or ~~[consolidation]~~ share exchange may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 12. Section 414-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department director files a document by stamping or otherwise endorsing [~~“Filed”, together with the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 414-63 and 414-439, the department director shall deliver the document copy, stamped with the date and time of receipt, to the domestic or foreign corporation or its representative.]~~ the document including the date and time of receipt.”

SECTION 13. Section 414-51, Hawaii Revised Statutes is amended by amending subsections (a), (b), and (c) to read:

“(a) A corporate name:

- (1) Must contain the word “corporation”, “incorporated”, or “limited”, or the abbreviation “corp.”, “inc.”, or “ltd.” ~~[, or words or abbreviations of like import in another language]; and~~
- (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 414-41 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name may not be the same as or substantially identical to:

- (1) The name of any ~~[domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business or conduct affairs in this State;]~~ entity registered or authorized to transact business or conduct affairs under the laws of this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;
- (3) The fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable; and
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A corporation may apply to the department director for authorization to use a name that is substantially identical, based upon the department director’s records ~~[from]~~ to one or more of the names described in subsection (b). The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to make the name distinguishable from the name of the applying corporation; or
- (2) The applicant delivers to the department director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 14. Section 414-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person may reserve the exclusive use of a domestic or foreign corporate name~~;~~ including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth the name and address of the applicant and the name proposed to be reserved. If the department director finds that the corporate name applied for is available, the department director shall reserve the name for the applicant's exclusive use for a one hundred twenty-day period."

SECTION 15. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any ~~[domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company]~~ entity registered or authorized to transact business ~~[in]~~ under the laws of this State is substantially identical to, or confusingly similar to, its name may file a petition with the department director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91."

SECTION 16. Section 414-61, Hawaii Revised Statutes is amended to read as follows:

"[~~§~~414-61~~]~~] Registered office and registered agent. (a) Except as provided in subsection (b), each corporation ~~[must]~~ shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic ~~[corporation or not-for-profit domestic corporation]~~ entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office; or
 - (C) A foreign ~~[corporation or not-for-profit foreign corporation]~~ entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

(b) A corporation may, but shall not be required[,], to maintain a registered office and a registered agent in this State during the time that the corporation has at least one officer or director who is a resident of this State.”

SECTION 17. Section 414-62, Hawaii Revised Statutes, is amended to read as follows:

“[H]§414-62[.] Designation or change of registered office or registered agent. (a) A corporation that does not already have a registered office and registered agent may designate ~~[or change]~~ its registered office ~~[or]~~ and registered agent by delivering to the department director for filing a statement of ~~[change]~~ designation that sets forth:

- (1) The name of the corporation;
- (2) The street address of its ~~[current]~~ registered office;
- ~~[(3) If the current registered office is to be changed, the street address of the new registered office;~~
- ~~[(4)]~~ (3) The name of its ~~[current]~~ registered agent; and
- ~~[(5) If the current registered agent is to be changed, the name of the new registered agent; and~~
- ~~[(6)]~~ (4) That ~~[after the change or changes are made,]~~ the street addresses of its registered office and the business office of its registered agent will be identical.

(b) A corporation may change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

~~[(b)]~~ (c) If the street address of the registered agent’s business office changes, the registered agent may change the street address of the corporation’s registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 18. Section 414-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A registered agent may resign from the registered agent’s appointment by signing and delivering to the department director for filing the signed ~~[original and two exact or conformed copies of a]~~ statement of resignation. The statement may include a statement that the registered office is also discontinued.”

SECTION 19. Section 414-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and in case the corporation has not filed with the department director pursuant to this chapter, the name of a registered agent upon whom legal notice and process

from the courts of the State may be served, and likewise if the person named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to ~~[the secretary of]~~ the corporation at its principal office. Service using registered or certified mail is perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by postmark, if mailed postpaid and correctly addressed."

SECTION 20. Section 414-125, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414-127, however, notice of the adjourned meeting [must] shall be given under this section to ~~[persons who are]~~ shareholders ~~[as]~~ who are entitled to notice of the new record date."

SECTION 21. Section 414-141, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~414-141~~]~~] Shareholders' list for meeting. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list ~~[must]~~ shall be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting ~~[is given]~~ for which the list was prepared is given and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent, or ~~the shareholder's~~ attorney, is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, ~~[the]~~ shareholder's agent, or shareholder's attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney, to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the circuit court, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting."

SECTION 22. Section 414-143, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form. The appointment form shall be signed

by either the shareholder personally or by the shareholder's attorney-in-fact. A shareholder may authorize another person to act as a proxy for the shareholder by:

- (1) Executing a writing authorizing another person or persons to act as a proxy for the shareholder, which may be accomplished by the shareholder or the shareholder's authorized attorney-in-fact, officer, director, employee, or agent signing the writing or causing the shareholder's signature to be affixed to the writing by any reasonable means, including without limitation the use of a facsimile signature; or
- (2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission authorizing the person or persons to act as a proxy for the ~~[shareholders]~~ shareholder to the person or persons who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the shareholder.

A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission."

SECTION 23. Section 414-145, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation ~~[if]~~ acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and to give it effect as the act of the shareholder if:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
- (5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on the vote, consent, waiver, or proxy appointment or ~~[about]~~ the signatory's authority to sign for the shareholder."

SECTION 24. Section 414-222, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-222~~]]~~ Limitation of liability of directors; shareholder approval required. (a) A corporation may eliminate or limit the personal liability of its directors in any action brought by the shareholders or the corporation for monetary damages against any director of the corporation for any action taken, or any failure to take any action, as a director; provided that:

- (1) The elimination or limitation shall be authorized, directed, or provided for in:
 - (A) The articles of incorporation of the corporation; or
 - (B) Any duly adopted amendment of the articles of incorporation; and
- (2) If the provision eliminating or limiting the personal liability of a corporation's directors is authorized, directed, or provided for by amendments to the articles of incorporation, it shall be adopted upon the affirmative vote of the holders of two-thirds of the shares represented at the shareholders' meeting and entitled to vote; provided that the vote also constitutes a majority of the shares entitled to vote.

(b) A corporation shall not eliminate or limit the personal liability of a director for:

- (1) The amount of a financial benefit received by a director to which the director is not entitled;
- (2) An intentional infliction of harm on the corporation or the shareholders;
- (3) A violation of section 414-223; or
- (4) An intentional violation of criminal law.

(c) The shareholders of the corporation shall receive written notice of any proposal by the corporation to eliminate or limit the personal liability of the directors under subsection (a)(2), and the corporation shall in such cases submit the duly adopted amendment to the articles of incorporation to the department director.

~~[(d) No provision pursuant to subsection (a)(1) shall be authorized by the corporation to eliminate or limit the liability of directors for acts, omissions, or causes of action occurring, accruing, or arising prior to June 7, 1989.~~

~~(e)]~~ (d) Nothing in this section shall impair or affect the validity of any provisions of the bylaws of a corporation eliminating or limiting the personal liability of the directors, which were authorized, directed, or provided for and approved by the shareholders of the corporation in compliance with then existing law prior to July 1, 1996.”

SECTION 25. Section 414-234, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any officer ~~[or agent]~~ may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed. ~~[Election or appointment of an officer or agent shall not of itself create contract rights.]”~~

SECTION 26. Section 414-263, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director, as set forth in paragraph (2) of the definition of ~~[related person]~~ “related person” in section 414-261, is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the

transaction such that the director may not make the required disclosure described in paragraph (2) of the definition of [related person] “required disclosure” in section 414-261, then disclosure is sufficient for purposes of subsection (a) if the director:

- (1) Discloses to the directors voting on the transaction the existence and nature of the director’s conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and
- (2) Plays no part, directly or indirectly, in their deliberations or vote.”

SECTION 27. Section 414-271, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and~~
- (6) ~~If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 28. Section 414-271, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After a conversion of a domestic or foreign corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the department director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the department director prior to the effective date of the conversion. If the department director finds the statement satisfies the requirements provided by law, the department director, after all fees have been paid shall:

- (1) Stamp the [word “Filed” on the] statement and include the date of the filing;
- (2) File the document in the department director’s office; and
- (3) Issue a certificate of abandonment to the converting entity or its authorized representatives.”

SECTION 29. Section 414-272, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§414-272[H] Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 414-271 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:

- (A) The name, type of entity, and state^[,] or country of incorporation, formation, or organization of the converting ~~[entity;]~~ and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 414-271;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder, partner, member, or owner of the converting entity or the converted entity;
- (2) If the converting entity is a domestic corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each class or series;
 - (3) If the converting entity is a domestic corporation, the number of shares outstanding that voted for and against the plan, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
 - (4) If the converting entity is a foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the department director. ~~[If the converted entity is a domestic corporation, the articles of incorporation shall also be delivered to the department director with]~~ The converted entity, if a domestic corporation, domestic professional corporation, domestic non-profit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the department director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the department director, after all fees have been paid, shall:

- (1) Stamp ~~[the word "Filed" on]~~ the articles of conversion and include the date of the filing;
- (2) File the document in the department director's office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives."

SECTION 30. Section 414-273, Hawaii Revised Statutes, is amended to read as follows:

~~"[§414-273] Effective date of the conversion. [Upon] A conversion shall be effective upon the [issuance] filing of the certificate of conversion [by the department director, the conversion shall be effective]."~~

SECTION 31. Section 414-274, Hawaii Revised Statutes, is amended to read as follows:

~~"[§414-274] Effect of conversion. When a conversion becomes effective:~~

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other entity, the converted entity shall:
 - (A) ~~Appoint a resident of this State, as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and~~
 - (B) ~~Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under part XIV; and] file with the director:~~
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity; and
- (9) If the converting entity is a domestic corporation, part XIV shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 32. Section 414-287, Hawaii Revised Statutes, is amended to read as follows:

“[§414-287] Restated,² amended and restated articles of incorporation. (a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

~~[(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 414-283.~~

~~[(e)] (b) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 414-125. The notice [must] shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement [that identifies any amendment or other change it would make in the articles [of] incorporation].~~

~~[(d)] (c) A corporation restating its articles of incorporation shall deliver to the department director for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a [certificate setting forth:~~

- ~~(1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or~~
- ~~(2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 414-286.] statement that the restatement of incorporation correctly sets forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and any amendments thereto.~~

~~[(e)] (d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.~~

~~[(f)] (e) The department director may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the [certificate] information required by subsection [(d)-] (c).~~

(f) A domestic corporation, at any time, may amend and restate its articles of incorporation by complying with the procedures and requirements of part XI of this chapter.

(g) Upon its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required by section 414-286; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(h) The amended and restated articles of incorporation shall be delivered to the department director for filing together with a statement setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or
- (2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 414-286. The department director may certify the amended and restated articles of

incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (g)(2) and (3)."

SECTION 33. Section 414-315, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A merger or share exchange takes effect upon the effective time and date of the filing of articles of merger or share exchange[-], or upon the time and date subsequent to the filing as set forth in the articles of merger or share exchange; provided not more than thirty days elapse from the date of filing."

SECTION 34. Section 414-317, is amended to read as follows:

"[§414-317] Merger or share exchange with foreign corporation. (a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

- (1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
- (3) The foreign corporation complies with section 414-315 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; ~~[and]~~
- (4) The foreign corporation, if it is the surviving corporation of the merger, delivers a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated to the director within sixty days after the merger becomes effective; and

- ~~[(4)]~~ (5) Each domestic corporation complies with the applicable provisions of sections 414-311 to 414-314 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 414-315.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

- (1) To irrevocably appoint [the department director] a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and
- (2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under part XIV.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

SECTION 35. Section 414-318, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any corporation owning at least ninety per cent of the outstanding shares of each class of two or more corporations may adopt a plan of merger pursuant to section 414-314 [and deliver] that shall be delivered to the department

director for filing including articles of merger. The articles of merger shall be signed by the parent corporation and the surviving subsidiary corporation[~~-, and the~~]. The plan of merger shall set forth:

- (1) The name of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporations, the name of any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of any nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.”

SECTION 36. Section 414-319, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~414-319~~] Merger with or into domestic or foreign limited liability company.~~ (a) As used in this section, the terms “limited liability company” and “foreign limited liability company” shall have the meanings defined in section 428-101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 414-311 and 414-313, and in the case of a foreign corporation it complies with section [~~414-312.~~] 414-317.

(c) In addition to the requirements of section 414-311, the plan of merger shall also set forth:

- (1) The name of each limited liability company and foreign limited liability company proposing to merge; and
- (2) If the surviving entity is a limited liability company or a foreign limited liability company:
 - (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to the merger, or a statement that the information is contained in the operating agreement proposed for the surviving entity;
 - (B) The contents of the articles of organization of the surviving entity pursuant to the merger in accordance with section 428-203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
 - (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which, if not separately provided in the plan of merger, shall state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by these persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of

each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the ~~[office of the]~~ department director for filing articles of merger complying with section 414-315, executed on behalf of each party to the merger. The articles of merger shall:

- (1) Comply with section 414-315 if the surviving entity is a domestic or foreign corporation; or
- (2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.

(e) Section 414-316 shall be applicable to each corporation that is a party to the plan of merger.

~~[(f) If a foreign corporation is a party to the merger, section 414-317 shall apply to the foreign corporation.]”~~

SECTION 37. Section 414-332, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-332~~]]~~ Sale of assets other than in regular course of business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation’s board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

- (1) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and
- (2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with section 414-125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) With respect to ~~[the]~~ corporations incorporated on or after July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(f) With respect to corporations incorporated before July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions therefor. The authorization shall require the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote as a class thereon and of the total shares entitled to vote thereon. The articles of incorporation

may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall not be less than the proportion set forth in subsection (e).

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(h) A transaction that constitutes a distribution is governed by section 414-111 and not by this section.

(i) A sale, lease, exchange, or other disposition of the property of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation if the corporation is retaining sufficient property to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange, or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid shareholders' rights which might otherwise arise under this chapter."

SECTION 38. Section 414-382, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For a proposal to dissolve to be adopted:

- (1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
- (2) The shareholders entitled to vote must approve the proposal to dissolve as provided in ~~[subsection]~~ subsections (e)[-] and (f).”

SECTION 39. Section 414-383, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A corporation is dissolved upon the effective date of its articles of dissolution. The articles of dissolution may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 40. Section 414-385, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its ~~[director]~~ directors or officers to standards of conduct different from those prescribed in part IX;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.’’

SECTION 41. Section 414-386, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer ~~than~~ one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.’’

SECTION 42. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~involuntarily~~ dissolved corporation pursuant to the amendment provisions of this chapter.’’

SECTION 43. Section 414-415, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§414-415)]~~ **Election to purchase in lieu of dissolution.** (a) In a proceeding under section 414-411(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 414-411(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation, within ten days thereafter, shall give written notice to all shareholders, other than the ~~petitioner~~ petitioning shareholder. The notice ~~must~~ shall state the name and number of shares owned by the ~~petitioner~~ petitioning shareholder and the name and number of shares owned by each electing shareholder and ~~must~~ shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate ~~must~~ shall file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under section 414-411(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the shareholder’s shares, unless

the court determines that it would be equitable to the corporation and the shareholders, other than the ~~[petitioner]~~ petitioning shareholder, to permit the discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the ~~[petitioner's]~~ petitioning shareholder's shares, the court shall enter an order directing the purchase of ~~[petitioner's]~~ the petitioning shareholder's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the section 414-411(2) proceedings and determine the fair value of the ~~[petitioner's]~~ petitioning shareholder's shares as of the day before the date on which the petition under section 414-411(2) was filed or as of any other date the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon the terms and conditions that the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating ~~[petitioner's]~~ the petitioning shareholder's shares among holders of different classes of shares, the court ~~[should]~~ shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under section 414-411(2)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the petitioning shareholder.

(f) Upon entry of an order under ~~[subsections]~~ subsection (c) or (e), the court shall dismiss the petition to dissolve the corporation under section 414-411, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to the petitioning shareholder by the order of the court that shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 414-382 and 414-383, which articles ~~[must]~~ shall then be adopted and filed within fifty days thereafter. Upon filing of the articles of dissolution, the corporation shall be dissolved in accordance with sections 414-385 to 414-387, and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the ~~[petitioner]~~ petitioning shareholder may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under ~~[subsections]~~ subsection (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to section 414-111."

SECTION 44. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The foreign corporation shall deliver with the completed application a certificate of ~~[existence (or a document of similar import)]~~ good standing duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated~~[-];~~ provided the certificate shall be dated not earlier than sixty days prior to the filing of the application.”

SECTION 45. Section 414-434, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-434]]~~ **Change of name by foreign corporation.** (a) Whenever the name of a foreign corporation authorized to transact business in this State is changed by the amendment of its articles of incorporation, the foreign corporation, within ~~[thirty]~~ sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the foreign corporation shall not thereafter transact any business in this State until it has changed its name to a name that is available to it under the laws of this State or has otherwise complied with this chapter.

(c) If a foreign corporation is unable to change its name to a name that is available to it under the laws of this State, it may deliver to the department director a copy of a certificate of registration of a trade name ~~[for the foreign corporation's file]~~ and thereafter shall become authorized to transact business in the State under that name.”

SECTION 46. Section 414-436, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation may not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;
- (3) The fictitious name of another foreign corporation authorized to transact business in this State; and
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the department director's records ~~[from]~~ to the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to the other entity's name to make the name distinguishable from the name of the applicant; or

- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 47. Section 414-439, Hawaii Revised Statutes, is amended to read as follows:

"[H§414-439] Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign from the registered agent's appointment by signing and delivering to the department director for filing ~~[the original and two exact or conformed copies of]~~ a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The registered agent shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The ~~[department director]~~ registered agent shall mail ~~[the other]~~ a second copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed."

SECTION 48. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

"[H§414-461] Grounds for revocation. The department director may commence a proceeding under section 414-462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The foreign corporation has failed to file its annual report with the department director for a period of two years;
- (2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;
- (3) The foreign corporation does not inform the department director under section 414-438 or 414-439 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the incorporator, director, officer, or agent knew was false in any material respect with intent that the document be delivered to the department director for filing; or
- (5) The department director receives a duly authenticated certificate from the ~~[department director or other]~~ official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger."

SECTION 49. Section 414-462, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The department director's revocation of a foreign corporation's certificate of authority appoints the department director the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the department director under this subsection is service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the

process to the [secretary of the] foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.”

SECTION 50. Section 414-472, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-472]]~~ **Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall deliver to the department director for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The address of its registered office and the name of its registered agent at that office in this State;
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and [principal] officers; and
- (5) A brief description of the nature of its business[;]
- ~~(6) The].~~

Domestic corporations shall also provide the total number of authorized shares, itemized by class and series, if any, within each class[;], and

~~[(7) The]~~ the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must reflect the state of the corporation’s affairs as of December 31, of the year preceding the year of filing.

~~(c) [The first annual report must be delivered to the department director between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the department director between January 1 and April 1 of the following calendar years.]~~ Each annual report of a corporation shall be delivered to the director between January 1 and March 31 of each year in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between January 1 and March 31 in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its articles of incorporation or its application for a certificate of authority, as the case may be, was filed by the director.

(d) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it is deemed to be timely filed.”

SECTION 51. Section 414-484, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-484]]~~ **Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity [does] shall not affect other provisions or applications of [the] this chapter that can be given effect without the invalid provision or application, and to this end the provisions of [the] this chapter are severable.”

SECTION 52. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

“§415A-8 Corporate name. The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule ~~[or regulation]~~ of the licensing authority of the profession; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the applicant files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 53. Section 415A-10, Hawaii Revised Statutes, is amended to read as follows:

“§415A-10 Death or disqualification of a shareholder. (a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing verified articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors in lieu of a statement of intent as required by section 415-92(3).

(b) If the price for the shares of the corporation is not fixed by its articles of incorporation or bylaws or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case may be, shall make a written offer to pay for the shares at a specified price deemed by the corporation to be the fair value thereof as of the date of the death, disqualification, or transfer. The offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of the offer, and a profit and loss statement of the corporation for the ~~[t]welve-month[t]~~ period ended on the date of that balance sheet.

(c) If within thirty days after the date of the written offer from the corporation the fair value of the shares is agreed upon between the disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of the offer, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value the disqualified person shall cease to have any interest in the shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the circuit where the principal office of the corporation is located requesting that the fair value of the shares be found and determined. If the corporation fails to file a petition as provided in this subsection, the disqualified person may file a petition within sixty days after delivery of a written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing the shares. The court, in its discretion, may order that the judgment be paid in such installments as the court may determine. The court, if it so elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all of the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court finds that the action of the disqualified person in failing to accept the offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for the shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as provided in this section,

may be held and disposed of by the corporation as in the case of other treasury shares.

(i) This section shall not require the purchase of shares of a disqualified person where the period of disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.

(k) Nothing contained herein shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

(l) Under this section, unless otherwise stated, references to a "disqualified person" shall also be construed to include deceased shareholders and personal representatives of deceased shareholders."

SECTION 54. Section 415A-16.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~"(c) A plan of conversion shall set forth:~~

- ~~(1) The name of the converting entity and the converted entity;~~
- ~~(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;~~
- ~~(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and~~
- ~~(4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;~~
- ~~(5) If the converted entity is a professional corporation, the articles of incorporation of the professional corporation shall be attached; and~~
- ~~(6) If the converted entity is not a professional corporation, proof that the converted entity is registered in this State shall be attached]."~~

SECTION 55. Section 415A-16.6, Hawaii Revised Statutes, is amended to read as follows:

"[H§415A-16.6] Articles of conversion. (a) If a plan of conversion has been approved in accordance with section 415A-16.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [entity, and organizational form of the converting entity]; and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 415A-16.5;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder of the converting entity or the converted entity;
- (2) If the converting entity is a professional corporation, the number of shares outstanding and, if the shares of any class or series are entitled to

vote as a class, the designation and number of outstanding shares of each such class or series;

- (3) If the converting entity is a professional corporation, the number of shares outstanding that voted for and against the plan and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
- (4) If the converting entity is another entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. ~~[If the]~~ The converted entity [is a professional corporation, the articles of incorporation shall also be delivered to the director], if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, foreign corporation, general partnership, limited partnership, or domestic limited liability company, shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the ~~[word “Filed” on the]~~ articles of conversion and include the date of the filing;
- (2) File the document in the director’s office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives.”

SECTION 56. Section 415B-87, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership, of the converting entity into shares or other forms of ownership, of the converted entity, or any combination thereof;
- (5) ~~If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and~~
- (6) ~~If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 57. Section 415B-125, Hawaii Revised Statutes, is amended to read as follows:

“§415B-125 Filing of application for certificate of authority. The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a certificate of good standing duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated, which certificate shall be dated not earlier than ~~[thirty]~~ sixty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate.”

SECTION 58. Section 415B-156, Hawaii Revised Statutes, is amended to read as follows:

“§415B-156 Miscellaneous charges. The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 25 cents a page and [\$10]¹ \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action.”

SECTION 59. Section 417E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition of “broker-dealer” to be appropriately inserted and to read:

““Broker-dealer” means a “dealer” as defined in section 485-1.”

2. By amending the definition of “beneficial owner” to read:

““Beneficial owner” includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security ~~[and/or]~~ or the power to dispose of, or direct the disposition of, the security. Beneficial ownership includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentages of the class owned by any other person. A person shall be deemed the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which this person owns ten per cent or more of the equity, and any affiliate or associate of this person.”

SECTION 60. Section 420-1, Hawaii Revised Statutes, is amended to read as follows:

“§420-1 Definitions. As used in this chapter, the following words and phrases, unless ~~[differently defined or described,]~~ the context otherwise requires, shall have the meanings and references as follows:

“Board of directors”~~[-The]~~ means the board of directors of the corporation created under this chapter.

“Corporation”~~[-A]~~ means a business development corporation created under this chapter.

“Financial institution”~~[-Any]~~ means any banking corporation or trust company, building and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

“Loan limit”~~[-For]~~ means for any member, the maximum amount permitted to be outstanding at one time on loans made by the members to the corporation, as determined under this chapter.

“Member”~~[-Any]~~ means any person, corporation, company, association, partnership, foundation, or other institution, including any financial institution, which or who undertakes to lend money to a corporation created under this chapter, upon its call, and in accordance with this chapter, but not including the Small Business Administration and any other federal agency.

“Pacific Islands”[~~:-The~~] means the State of Hawaii, American Samoa, Guam, the Cook Islands, Easter Island, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, the Northern Mariana Islands, Belau (Palau), Papua New Guinea, Pitcairn Island, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, French Polynesia, and Western Samoa.”

SECTION 61. Section 421-1, Hawaii Revised Statutes, is amended by amending the definition of “association” to read as follows:

““Association” means any corporation organized under this chapter for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this chapter and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this chapter for associations organized hereunder; provided that any fish marketing association organized pursuant to chapter 422 and in existence on May 7, 1991, shall be considered an association for purposes of this chapter. [Association] Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.”

SECTION 62. Section 421-5, Hawaii Revised Statutes, is amended to read as follows:

“§421-5 Name. Section 415B-7 shall apply to associations formed under this chapter and no [Hawaiian] domestic corporation not organized under this chapter shall use the word “cooperative” as a part of its name.”

SECTION 63. Section 421-20, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities or products and its relation to the prospective volume of consumption, selling prices, and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under [{}a{}] program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.”

SECTION 64. Section 421-21.6, Hawaii Revised Statutes, is amended to read as follows:

“[{}§421-21.6{}] Mergers and consolidation; procedures; approval by members. (a) Unless otherwise prohibited, any association organized under this chapter may merge or consolidate with another association or with any association incorporated under the laws of another state by complying with this section or the law of the state where the surviving or new association will exist.

(b) The board or a committee selected by the board or the members shall adopt a written plan of merger or consolidation setting forth:

- (1) The names of the associations proposing to merge or consolidate;
- (2) The name of the surviving or new association;
- (3) The manner and basis of converting the stock or membership of each association into stock or membership in the surviving or new association;

- (4) The terms of the merger or consolidation;
- (5) The proposed effect of the consolidation or merger on the members of the association; and
- (6) For a consolidation, the articles of the new association.

(c) The board of each association shall mail a notice of the proposed merger or consolidation to each member. The notice shall contain the full text of the merger or consolidation plan and the time and place of the meeting at which the plan will be considered. An association with more than two hundred members may publish the notice as provided in section [§]421-12[§].

(d) At the meeting, a vote of the members shall be taken on the proposed plan[;]; provided that a quorum of the members is registered as being present or represented by proxy vote at the meeting. The plan shall be approved upon receiving the affirmative vote of:

- (1) Two-thirds of the votes cast; or
- (2) For an association with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

After the plan has been approved, the chair, vice-chair, president, vice president, secretary, or assistant secretary of each association merging or consolidating shall sign the articles of merger or consolidation and a statement that the plan was adopted according to this section.

(e) The articles of merger or consolidation shall be filed with the director of commerce and consumer affairs.

(f) For a merger, the articles of the surviving cooperative or association shall be deemed amended to the extent provided in the articles of merger.

(g) The merger or consolidation shall become effective upon the effective date and time of filing the articles of merger or consolidation, or upon a date and time subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

(h) The director of commerce and consumer affairs shall issue a certificate of merger or consolidation.

(i) A certified copy of the articles or of a certificate of merger or consolidation issued by the director shall be filed with the department of agriculture.

~~[(j)]~~ (j) After the effective date, the associations that are parties to the plan shall become a single association. For a merger, the surviving association shall be the association designated in the plan. For a consolidation, the new cooperative shall be the association provided for in the plan. Except for the surviving or new association, the separate existence of all cooperatives and associations that are parties to the plan shall cease on the effective date of the merger or consolidation.

The surviving or new association shall possess all of the rights and property of each of the merged or consolidated associations, and shall be responsible for all their obligations. The title to property of the merged or consolidated association shall be vested in the surviving or new association without reversion or impairment of the title caused by the merger or consolidation.

~~[(k)]~~ (k) The rights of creditors shall not be impaired by the merger or consolidation without the creditors' consent.

~~[(l)]~~ (l) The director of commerce and consumer affairs may charge a filing fee for filing the articles."

SECTION 65. Section 421C-12, Hawaii Revised Statutes, is amended to read as follows:

“§421C-12 Bylaws; contents. The bylaws shall contain:

- (1) The maximum amount or percentage of capital which may be owned or controlled by one member[-];
- (2) A provision that in all decisions to amend the articles or bylaws, as the case may be, the members shall be informed of those decisions at least thirty days in advance through a mailing or a prominent notice at all association locations[-];
- (3) The method and terms of admission to membership and the disposal of members' interests on termination of membership for any reason[-];
- (4) A provision stating that a majority of the directors, or five per cent of the[-] members or two hundred fifty[-] members, whichever is less, may submit a petition in writing and demand a special membership meeting, which shall be called by the secretary within thirty days of that demand[-];
- (5) A provision that notice for all meetings shall be made through posting prominent signs at all association locations or by mailing to the last known address of each member or director. Notices for special meetings shall specify the purpose of the meeting[-];
- (6) A provision that associations shall not discriminate on their acceptance of members on a basis of race, gender, religion, income, marital status, or nationality[-]; and
- (7) A provision stating that within a specified period of time, any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition [of] by at least five per cent of the[-] members or two hundred fifty[-] members, whichever is less, or by majority vote [~~of at least a majority~~] of the directors; provided that rights of third parties which have vested between the time of action by the directors and approval or disapproval by the members shall not be impaired.”

SECTION 66. Section 421C-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The [reserve] surplus fund established in subsection (a) may be expended for capital improvements or emergencies upon a two-thirds majority vote of the directors, or may be expended under section 421C-22, 421C-23, or 421C-24, by majority vote of the directors.”

SECTION 67. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

“§425-1 Registration and annual statements. (a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;

- (3) The street address of the chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the street address of the partnership's chief executive office and of one office in this State, if there is one;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State;
- (5) The fact that none of the partners is either a minor or an incompetent person; and
- (6) In the case of a foreign general partnership, the designation of a person residing within this State as agent for service of process and notice, and the person's street address[; and
- (7) ~~The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter].~~

(b) Every such annual statement shall contain the information specified in [F]subsection (a)[H] (1), (2), (3), (5), [F]and[H] (6) and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

(c) The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner.

(d) The registered agent of a foreign general partnership may be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office."

SECTION 68. Section 425-5, Hawaii Revised Statutes, is amended to read as follows:

"§425-5 Minors and incompetent persons. A minor or incompetent person may not be a partner, but may have a beneficial interest in a partnership through a trustee or duly appointed guardian.

This section shall not apply to the current partners in any duly registered partnership [nøw] doing business in the State[;] as of July 14, 1969."

SECTION 69. Section 425-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) No statement or certificate of any partnership shall be recorded by the director unless the name[;]

- (1)** ~~Is~~ is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this

provision shall not apply if the partnership files with the director any one of the following:

~~[(A)]~~ (1) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or

~~[(B)]~~ (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.

(b) The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability company, or limited liability partnership name, trade name, trademark, or service mark.”

SECTION 70. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

“**§425-12 Fee for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, [~~\$20;~~] \$50;
- (15) Special handling fee for certificates issued by the director, [~~\$20~~] \$25 per certificate;
- (16) Special handling fee for certification of documents, [~~\$1 per page;~~] \$25;
- (17) Special handling fee for review of articles of conversion, \$150; and
- (18) Agent’s statement of change of address, \$25 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.

(b) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a general partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a general partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

~~[(b)]~~ (c) All fees collected under this section shall be managed in accordance with section 26-9(l).”

SECTION 71. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfilled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled general partnership pursuant to the amendment provisions of this chapter.”

SECTION 72. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

“**§425-17 Withdrawal procedure for foreign general partnership.** (a) Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;
- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service ~~[of]~~ process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The dates that notice of the foreign general partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a ~~[newspaper of general circulation published in this State]~~ daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide, or a statement that publication was not made;
- (6) That all taxes, debts, obligations, and liabilities of the foreign general partnership in this State have been paid and discharged or that adequate provision has been made therefor;
- (7) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (8) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

(b) Upon the filing of the application for withdrawal, and after the payment of a fee of \$10, the director shall issue a certificate of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices[,] and processes may be made on any agent of the general partnership within this State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it.”

SECTION 73. Section 425-153, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The agent of a limited liability partnership for service of process ~~shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in this State.~~ shall be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.”

SECTION 74. Section 425-168, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§425-168**~~]]~~ **Fee for recording.** (a) The director shall collect the following fees for documents filed under this subpart:

- (1) For each annual report filed, a fee of ~~[\$50;]~~ \$25;
- (2) For each statement of qualification of limited liability partnership, a fee of ~~[\$100 for each partner, subject to a maximum fee of \$10,000;]~~ \$50;
- (3) For each statement of foreign qualification of limited liability partnership, a fee of ~~[\$1,000 if the partnership has fewer than ten partners; \$5,000 if the partnership has ten or more but fewer than fifty partners; and \$10,000 if the partnership has fifty or more partners;]~~ \$100;
- (4) For each certificate of correction or statement of amendment, a fee of ~~[\$100;]~~ \$50;
- (5) For each certificate of good standing, a fee of ~~[\$100;]~~ \$25;
- (6) For review of articles of conversion, a fee of \$200;
- (7) For any other certificate, statement, or document, a fee of ~~[\$100;]~~ \$50; and
- (8) For each certification of domestic or foreign partnership, a fee of ~~[\$100;]~~ \$20;
- (9) For each agent’s statement of change of registered office, \$20 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.

(b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:

- (1) For limited liability partnerships:
 - (A) Statement of qualification of limited liability partnership, ~~[\$100;]~~ \$50;
 - (B) Certificate of correction, ~~[\$100;]~~ \$50;

- (C) Statement of amendment of limited liability partnership, ~~[\$100;]~~ \$50;
- (D) Annual report, ~~[\$100;]~~ \$50;
- (E) Certification of limited liability partnership, ~~[\$1 a page;]~~ \$25;
- (F) Certificate of good standing, ~~[\$100;]~~ \$25; and
- (G) Articles of conversion, \$150;
- (2) For foreign limited liability partnerships:
 - (A) Statement of foreign qualification of limited liability partnership, ~~[\$100;]~~ \$50;
 - (B) Certificate of correction, ~~[\$100;]~~ \$50;
 - (C) Statement of amendment of foreign limited liability partnership, ~~[\$100;]~~ \$50;
 - (D) Annual report, ~~[\$100;]~~ \$50;
 - (E) Certification of foreign partnership, ~~[\$1 a page;]~~ \$25;
 - (F) Certificate of good standing, ~~[\$100;]~~ \$25; and
 - (G) Articles of conversion, \$150; and
- (3) For any other certificate or document authorized by this subpart, ~~[\$100-]~~ \$50.

(c) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited liability partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a limited liability partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

~~[(e)]~~ (d) All fees collected under this section shall be managed in accordance with section 26-9(l).”

SECTION 75. Section 425-192, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof;
- ~~(5) If the converted entity is a domestic partnership or limited liability partnership, the registration statement of the domestic partnership or limited liability partnership shall be attached; and~~
- ~~(6) If the converted entity is not a domestic partnership, or limited liability partnership, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 76. Section 425-193, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425-193** **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 425-192 and has not been abandoned, articles

of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting ~~[entity and the organizational form of the converting entity;]~~ and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 425-192;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion on written request and without cost, to any partner, shareholder, owner, or member of the converting entity or the converted entity; and
- (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
- (b) The articles of conversion shall be delivered to the director.
- (c) ~~[If the converted entity is a domestic partnership, the registration statement of the domestic partnership or limited liability partnership shall also be delivered to the director with the articles of conversion.]~~ The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion."

SECTION 77. Section 425-194, Hawaii Revised Statutes, is amended to read as follows:

"[§425-194] Effective date of the conversion. ~~[Upon the issuance]~~ The conversion shall be effective upon the filing of a certificate of conversion ~~[by the director, the conversion shall be effective]."~~

SECTION 78. Section 425D-101, Hawaii Revised Statutes, is amended by amending the definition of "other entity" to read as follows:

""Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign partnership, limited liability partnership, limited liability company, or a domestic professional corporation."

SECTION 79. Section 425D-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The exclusive right to the use of a name, including a fictitious name for a foreign limited partnership whose partnership name is not available, may be reserved by:

- (1) Any person intending to organize a limited partnership under this chapter and to adopt that name;
- (2) Any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;
- (3) Any foreign limited partnership intending to register in this State and adopt that name; and

- (4) Any person intending to organize a foreign limited partnership and intending to have it registered in this State and to adopt that name."

SECTION 80. Section 425D-206.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A domestic or foreign limited partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged."

SECTION 81. Section 425D-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person becomes a limited partner:

- (1) At the time the limited partnership is formed; or
- (2) [The] On the date stated in the records of the limited partnership as the date that person becomes a limited partner."

SECTION 82. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

"§425D-902 Registration. Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and street address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent ~~[shall be an individual resident of this State or a domestic corporation;]~~ shall be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic entity whose business office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office;
- (4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
- (5) The name and address of each general partner; and
- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn."

SECTION 83. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No registration for a foreign limited partnership shall be accepted by the director unless the name of such foreign limited partnership:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the foreign limited partnership files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 84. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

“§425D-1107 Fees for filing documents and issuing certificates. (a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
 - (2) Any certificate of amendment, restatement, or correction, \$20;
 - (3) Certificate of cancellation, \$20;
 - (4) Annual statement for domestic or foreign limited partnership, \$10;
 - (5) Any other certificate or document of domestic or foreign limited partnership, \$20;
 - (6) Application for registration as a foreign limited partnership, \$100;
 - (7) Any certificate of amendment or agent change for foreign limited partnership, \$20;
 - (8) Application for certificate of withdrawal of foreign limited partnership, \$20;
 - (9) Reservation of name, \$20;
 - (10) Transfer of reservation of name, \$20;
 - (11) Good standing certificate, [~~\$20;~~] \$25;
 - (12) Filing articles of conversion, \$200;
 - (13) Special handling fee for review of articles of conversion, \$150;
 - (14) Special handling fee for review of any limited partnership document, \$50;
 - (15) Special handling fee for certificates issued by the director, [~~\$20~~] \$25 per certificate;
 - (16) Special handling fee for certification of documents, [~~\$1 per page;~~] \$25; and
 - (17) Agent’s statement of change of address, \$20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership.
- (b) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a limited partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

~~[(b)]~~ (c) All fees collected under this section shall be managed in accordance with section 26-9(1).”

SECTION 85. Section 425D-1110, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic limited partnership, the certificate of limited partnership shall be attached; and~~
- (6) ~~If the converted entity is not a domestic limited partnership, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 86. Section 425D-1111, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425D-1111[H] Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 425D-1110 and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, entity type, and state[;] or country of incorporation, formation, or organization of the converting ~~[entity; and the organizational form of the converting entity;]~~ and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 425D-1110;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof;
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion, on written request and without cost, to any limited partner of the converting entity or the converted entity; and
 - (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
- (b) The articles of conversion shall be delivered to the director.

(c) ~~[If the converted entity is a domestic limited partnership, the certificate of limited partnership shall also be delivered to the director]~~ The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

SECTION 87. Section 425D-1112, Hawaii Revised Statutes, is amended to read as follows:

~~“[§425D-1112] Effective date of the conversion. [Upon] The conversion shall be effective upon the [issuance] filing of a certificate of conversion [by the director, the conversion shall be effective].”~~

SECTION 88. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the name of a limited liability company shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, trademark, or service mark registered in this State.”

SECTION 89. Section 428-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person may reserve the exclusive use of the name of a limited liability company or a foreign limited liability company, including a fictitious name for a foreign limited liability company whose company name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant’s exclusive use for a ~~[nonrenewable]~~ one hundred twenty-day period from the date of filing.”

SECTION 90. Section 428-110, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company. A registered agent shall be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.”

SECTION 91. Section 428-205, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§428-205**~~]]~~ **Signing of records.** (a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company;
- (2) Member of a member-managed company;
- (3) Person organizing the company, if the company has not been formed; or
- (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

~~[(b) A record signed under subsection (a) shall state the name and capacity of the signer adjacent to the signature.~~

(e) (b) The signer of a record to be filed under subsection (a) may do so as an attorney-in-fact by stating beneath or opposite the signature the name of the person for whom the signer is the attorney-in-fact. The power of attorney need not be filed with the record.”

SECTION 92. Section 428-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A record is corrected:

- (1) By preparing articles of correction that:
 - (A) Describe the record, including its filing date, or attach a copy of it to the articles of correction;
 - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
 - (C) Corrects the incorrect statement or defective certification or signing; and
- (2) By delivering the ~~[corrected record]~~ articles of correction to the director for filing.”

SECTION 93. Section 428-402, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A member’s obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member’s death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member or the member’s ~~[executors,]~~ executor, as the case may be, is obligated at the option of the company to contribute money equal to that portion of the value of the stated contribution which has not been made.”

SECTION 94. Section 428-404, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The only matters of a limited liability company’s business that require the consent of all the members are:

- (1) Amendments to the operating agreement under section 428-103;
- (2) Authorization or ratification of acts or transactions under section 428-103(b)(2)(B) which would otherwise violate the duty of loyalty;
- (3) Amendments to the articles of organization under section 428-204;
- (4) Compromising an obligation to make a contribution under section 428-402(b);

- (5) Compromising among members, [of] an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
- (6) Making interim distributions under section 428-405(a);
- (7) Admission of a new member;
- (8) Use of the company's property to redeem an interest subject to a charging order;
- (9) Consent to dissolve the company under section 428-801(2);
- (10) Waiving of the right to have the company's business wound up and the company terminated under section 428-802(b);
- (11) Merging the company with another entity under section 428-904(c)(1); and
- (12) Selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property with or without goodwill."

SECTION 95. Section 428-803, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 428-806, settle disputes by mediation or arbitration, and perform other necessary acts and ~~[shall]~~ may publish notice of intent to terminate as provided in section 428-808."

SECTION 96. Section 428-808, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a ~~[newspaper of general circulation in this State;]~~ daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide;
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and
- (3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within two years after the later of the last publication date of the notice or the date of filing of the articles of termination."

SECTION 97. Section 428-809, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§428-809]]~~ **Grounds for administrative termination.** The director may commence a proceeding to terminate a limited liability company administratively if the company ~~[has not, pursuant to section 428-210, filed its annual report for a period of two years.]~~ fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years pursuant to section 428-210;
- (3) Appoint and maintain an agent for service of process as required by this part; or
- (4) File a statement of a change in the name or business address of the agent as required by this part."

SECTION 98. Section 428-902.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any foreign limited liability company or other entity may adopt a plan of conversion and convert to a domestic limited liability company if the conversion is permitted by and complies with the laws of the state or country in which the foreign ~~[corporation]~~ limited liability company or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic limited liability company the articles of organization of the domestic limited liability company shall be attached; and~~
- (6) ~~If the converted entity is not a domestic limited liability company, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 99. Section 428-902.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§428-902.6]~~ **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 428-902.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [entity;] and [organizational form of the converting entity;] converted entities;
 - (B) That a plan of conversion has been approved;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member, shareholder, partner, or owner of the converting entity or the converted entity;
- (2) If the converting entity is a domestic limited liability company, the total number of authorized votes, and the number voted for and against the plan; and
- (3) If the converting entity is a foreign limited liability company or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. ~~[If the]~~ The converted entity [is], if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited

partnership, or domestic limited liability company [the articles of organization of the domestic limited liability company,] shall [also be delivered to the director] attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the [word “Filed” on the] articles of conversion and include the date of the filing;
- (2) File the document in the director’s office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives.”

SECTION 100. Section 428-903, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Upon] The conversion shall be effective upon the [issuance] filing of the certificate of conversion [by the director, the conversion shall be effective].”

SECTION 101. Section 428-1006, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to [the office required to be maintained by section 428-107:] its last known address appearing in the director’s records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation in duplicate, file one of the certificates in the office of the director and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.”

SECTION 102. Section 428-1007, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign limited liability company intending to cancel its authority to transact business in this State may publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a [newspaper of general circulation in this State;] daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide; and
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.”

SECTION 103. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger or conversion, \$200;

- (5) Statement of dissociation, \$50;
- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) Agent's statement of change of address, \$50 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or foreign limited liability company, ~~[25 cents per page, and \$10]~~ \$20 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger or conversion, ~~[\$80;]~~ \$50;
- (19) Special handling fee for review of articles of merger or conversion, ~~[\$200;]~~ \$150;
- (20) Special handling fee for certificate issued by the director not otherwise covered by this section, ~~[\$10]~~ \$25 per certificate;
- (21) Special handling fee for certification of record, ~~[\$1 per page;]~~ \$25; and
- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, ~~[\$50;]~~ \$25, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

SECTION 104. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Recording; duration; renewal; fee. The names and addresses of all persons found eligible for registration as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner and shall be open to public inspection. Except as hereinafter provided, every registration for dealers, investment advisers, salespersons, and investment adviser representatives under this section shall expire on December 31 ~~[in]~~ of each ~~[odd-numbered]~~ year, and every registration for dealers and salespersons under this section shall expire on December 31 of each year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the ~~[expiration]~~ year or as provided through the Central Registration Depository system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall

pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 ~~[of the expiration year]~~ shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any dealer, investment adviser, salesperson, or investment adviser representative, the dealer's, investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each renewal shall be \$200 in the case of dealers and investment advisers and \$50 in the case of salespersons and investment adviser representatives."

SECTION 105. Section 415-171, Hawaii Revised Statutes, is repealed.

SECTION 106. Section 415-172, Hawaii Revised Statutes, is repealed.

SECTION 107. Statutory material to be repealed is bracketed and stricken.⁴ New statutory material is underscored.

SECTION 108. This Act shall take effect on July 1, 2001.

(Approved May 22, 2001.)

Notes

1. So in original.
2. Comma should be underscored.
3. Prior to amendment "," appeared here.
4. Edited pursuant to HRS §23G-16.5.

ACT 130

H.B. NO. 693

A Bill for an Act Relating to the Bureau of Conveyances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 429-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the assistant registrar of the land court or in the bureau of conveyances, whichever is the office in which a transfer of the property would be recorded."

SECTION 2. Section 502-17, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsection (a) to read as follows:

"(a) The registrar shall accept and file in the registrar's office, upon the payment of the fee as provided in section 502-25, any plan of land prepared in the manner prescribed by this section. Every such plan shall contain a short name of the tract; the name of the ahupuaa or ili, district, and island; such data concerning the original title of the land as may be known, together with the name of the last owner

of record and the owner's address; the signature of the surveyor and the surveyor's address; the signature of the maker and the maker's address; date of survey, scale, the meridian line, area, the true azimuths and lengths of principal lines; and the names of all known adjoining owners. One or more durable monuments shall be placed on the land which shall connect with the government triangulation system and which monuments shall be placed as indicated on the plan. Whenever the land platted is made up of more than one original title, it shall be necessary to show all original title lines in broken lines as follows:

.....”
 (2) By amending subsection (d) to read as follows:
 “(d) On receipt for recordation of a transfer or separate description document concerning a lot in a subdivision, the registrar shall accept and file the document with:

- (1) A metes and bound description, either solely or as part of the document;
- (2) A county certified plat map; and
- (3) A letter from a registered professional surveyor, certifying that the metes and bounds description conforms to the accompanying plat map.

The document shall otherwise comply with the requirements for recordation under this section. Any parcel created or subdivided prior to the effective date of the subdivision laws of the respective counties are exempt from the provisions of this subsection.”

(3) By amending subsection (f) to read as follows:
 “(f) All fees collected under this section, except as provided under sections 501-23.5 and 502-25 for the bureau of conveyances special fund, shall be deposited in the state treasury to the credit of the general fund.”

SECTION 3. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

“**§502-31 Recording, method.** The registrar shall make or cause to be made an entire literal copy of all instruments, with their original signatures, required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument with the original signature, the date of its registry and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of all natural persons signing in their individual capacity shall be typewritten, stamped, [or] legibly printed by hand, or by [some other] a mechanical or electrical printing method beneath all signatures. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by eleven inches, or which contains a schedule or inventory sheet in excess of such size.

This section shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules adopted by the department of land and natural resources, pursuant to chapter 91.

All instruments to be recorded shall include the original signature and the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be

returned beginning one and one-half inch from the left margin and not exceeding three and one-half inches per line. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. [Each page of the instrument shall be single-sided sheets of written text.] Indorsements, if any, may be made on a conforming fly sheet. No papers or materials, written or otherwise, shall be secured or attached to a page in any manner that may conceal any other written text. If an instrument consists of more than one page, [it] each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The registrar of conveyances shall be permitted to remove any rivets affixed to any instrument. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic or electrostatic methods.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 22, 2001.)

ACT 131

S.B. NO. 98

A Bill for an Act Relating to Legal Services for the Indigent.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 305, Session Laws of Hawaii 1996, as amended by Act 121, Session Laws of Hawaii 1998, is amended by amending section 2, subsection (c) of section 607- , Hawaii Revised Statutes, to read as follows:

“(c) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections (a) and (b) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund. ~~[All unobligated or unexpended funds as of June 30, 2002, shall revert to the general fund. Upon final disbursement of the remaining balances to the general fund on June 30, 2002, the indigent legal assistance fund shall be terminated.]~~”

SECTION 2. Act 305, Session Laws of Hawaii 1996, as amended by Act 121, Session Laws of Hawaii 1998, is amended by amending the definition of “civil legal services” in section 2, subsection (h) of section 607- , Hawaii Revised Statutes, to read as follows:

““Civil legal services” means direct legal services provided by attorneys or by attorney-supervised staff to clients in civil matters, including pro bono, judicial, and administrative advocacy ~~[related]~~ relating to the civil legal problems of indigents.”

SECTION 3. Act 305, Session Laws of Hawaii 1996, as amended by Act 121, Session Laws of Hawaii 1998, is amended by amending section 3 to read as follows:

“SECTION 3. The commission on access to justice shall ~~[annually]~~ review on a biennial basis the filing fee surcharge program created by ~~[this]~~ Act¹ 305,

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Session Laws of Hawaii 1996, to determine whether it is meeting the civil legal needs of indigent persons and shall present its findings and recommendations to the legislature no later than January 1 of [each] that year.”

SECTION 4. Act 305, Session Laws of Hawaii 1996, as amended by Act 121, Session Laws of Hawaii 1998, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 1996~~[, and shall be repealed on June 30, 2002].~~”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

Note

1. “Act” should not be underscored.

ACT 132

S.B. NO. 589

A Bill for an Act Relating to Dental Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 423, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§423- Dental service corporation; regulation.** Dental service corporations shall be subject to and comply with chapter 431, article 2, parts II and III, and article 15; provided that dental service corporations shall not be subject to sections 431:2-215 and 431:2-216.”

SECTION 2. Chapter 448D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§448D- Dental service organization; regulation.** Dental service organizations shall be subject to and comply with chapter 431, article 2, parts II and III, and article 15; provided that dental service organizations shall not be subject to sections 431:2-215 and 431:2-216.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval and shall be repealed on July 1, 2002.

(Approved May 22, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 133

S.B. NO. 716

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Not-For-Profit Corporations that Provide Health Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the public interest to encourage development of senior housing communities in the State of Hawaii. The legislature further finds that Kahala Senior Living Community, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a senior housing community in Honolulu on the island of Oahu and thereby services the public.

The legislature further finds that Kahala Senior Living Community, Inc., may be assisted through the issuance of special purpose revenue bonds because its senior housing community in Honolulu is a health care project as defined in part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed the sum of \$142,000,000 for the purpose of assisting Kahala Senior Living Community, Inc., a Hawaii not-for-profit corporation in the leasing of land for, and the planning, design, construction, and operation of a senior housing community.

The legislature finds and determines that the activity of Kahala Senior Living Community, Inc., constitutes a health care facility as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, with the approval of the governor, to issue from time to time (including times subsequent to June 30, 2006), refunding special purpose revenue bonds in such principle amounts as the department shall determine to be authorized in section 2 and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption, and any such refunding special purpose revenue bonds shall be bonds for the projects and purposes described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. Any unused portion of the authorization to issue new special purpose revenue bonds under this Act shall lapse as of the close of business on June 30, 2006.

SECTION 6. Section 4 of Act 303, Session Laws of Hawaii 1991, is repealed.

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SECTION 7. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

ACT 134

S.B. NO. 1045

A Bill for an Act Making an Emergency Appropriation for Health Fund Premiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 91, Session Laws of Hawaii 1999, as amended by Act 281, Session Laws of Hawaii 2000, appropriated a certain designated sum to the department of budget and finance for the payment of the State's employer share of the health fund premium as set forth in chapter 87, Hawaii Revised Statutes, for the fiscal year beginning July 1, 2000, and ending June 30, 2001.

Section 4.1 of Act 281, Session Laws of Hawaii 2000, authorizes the governor to transfer up to \$14,500,000 in general funds to tourism (BED 113) for the operation and events of the Hawaii convention center. The department of budget and finance will expend all moneys appropriated for the State's employer share of health fund premiums before the end of the fiscal year, which includes transfer of funds to the Hawaii convention center. The department of budget and finance will be unable to meet its fiscal obligation to satisfy the State's obligation to provide for health benefits to state employees.

The purpose of this Act is to appropriate moneys to satisfy the State's statutory requirement relating to the public employees health fund.

SECTION 3. There is appropriated out the general revenues of the State of Hawaii the sum of \$15,500,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be used for the payment of health fund premiums under the department of budget and finance.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

ACT 135

S.B. NO. 1065

A Bill for an Act Relating to Architects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 464-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No person shall be eligible for licensure as a professional architect unless:

- (1) The person is the holder of an unexpired license in architecture issued to the person by any jurisdiction, domestic or foreign, ~~[in which the requirements for licensure at the time the person was first licensed are of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards are satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of architecture;]~~ and the person meets the requirements of this chapter and the rules of the board;
- [(2)] The person is the holder of a masters degree in architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of five years or more; has had two years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
- [(3)] (2) The person is ~~[a graduate]~~ the holder of a bachelor's, master's, or higher degree in architecture from a school or college approved by the board as of satisfactory standing~~[-and has completed an architectural curriculum of five years];~~ has had three years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
- [(4)] (3) The person is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of four years or a pre-architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
- [(5)] (4) The person is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; has had eight years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- [(6)] (5) The person has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;

provided that those persons who qualify under paragraphs (2) through ~~[(6);~~ (5), as of June 30, 2000, shall be required to fulfill the requirements of the ~~[Intern Development Program]~~ intern development program of the National Council of Architectural Registration Boards or of any similar program satisfactory to the board~~[-]~~, and approved by the board. For ~~[paragraphs]~~ paragraph (2) [and (3)], the intern development program shall fulfill the experience requirement. For paragraphs (3), (4), and (5), [and (6);] time participating in the intern development program shall be credited toward the experience requirement.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

ACT 136

S.B. NO. 1071

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The commissioner ~~[may]~~ shall require the managing general agent to furnish a bond in an amount ~~[acceptable to the commissioner with]~~ equal to \$100,000 or ten per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or with an insurance company [acceptable to] approved by the commissioner, for the protection of the insurer. Each managing general agent shall provide the commissioner with:

- (1) Proof of the bond at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the bond continues to be in effect or that a new bond has been secured.

(d) The commissioner ~~[may]~~ shall require the managing general agent to maintain an errors and omissions policy in an amount ~~[acceptable to the commissioner with]~~ equal to \$1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company [acceptable to] approved by the commissioner. Each managing general agent shall provide the commissioner with:

- (1) Proof of the policy at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the policy continues to be in effect or that a new policy has been secured.”

SECTION 2. Section 431:9B-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner ~~[may]~~ shall require a reinsurance intermediary-manager subject to subsection (b) to:

- (1) File a bond from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner in an amount [and from an insurer acceptable to the commissioner] equal to \$500,000 or ten per cent of the annual reinsurance premiums

- managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed \$10,000,000, for the protection of the reinsurer; and
- (2) Maintain an errors and omissions policy, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount [and from an insurer acceptable to the commissioner.] equal to \$250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed \$10,000,000.

At the time of application for licensure and each renewal, each reinsurance intermediary-manager shall provide the commissioner with proof of the bond and the policy, and appropriate documentation to show that the bond and the policy continues to be in effect or that a new bond and a new policy has been secured.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 22, 2001.)

ACT 137

S.B. NO. 1262

A Bill for an Act Relating to Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 208, Session Laws of Hawaii 2000, is amended by amending sections 3, 4, 5, and 6 to read as follows:

“SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance is hereby authorized, with the approval of the governor, to issue special purpose revenue bonds in a total amount not to exceed [~~\$19,000,000~~] \$38,000,000 in one or more series, for the purpose of assisting Rickmar Properties, Inc. (or a partnership in which Rickmar Properties, Inc. is a general partner, or the successor in interest or assignee of Rickmar Properties, Inc.), with one or more of the following:

- (1) The establishment of a distribution system through which chilled water produced at a water cooling facility will be moved to buildings wishing to be connected to the cooling facility; and
- (2) The financing, refinancing, or both, of the costs related to the planning, design, and construction of the distribution system, including costs of construction, renovation, equipping, and purchasing tangible assets (including land and easements for such distribution system and pipelines and other improvements) comprising such distribution system.

SECTION 4. The department of budget and finance shall process applications for special purpose revenue bonds under this Act in accordance with the requirements of its “Formal Application for Financing of an Industrial Enterprise.” The department shall report to the legislature twenty days before the convening of the regular sessions of [~~2001 and~~] 2002 and 2003 regarding any status with respect to the issuance of the special purpose revenue bonds authorized by this Act.

ACT 138

SECTION 5. The department of budget and finance is authorized, with the approval of the governor, to issue from time to time (including times subsequent to June 30, [2003;] 2005,) refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption, and any such refunding special purpose revenue bonds shall be bonds for the projects and purposes described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 6. Any unused portion of the authorization to issue new special purpose revenue bonds under this Act shall lapse as of the close of business on June 30, [2003;] 2005.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 22, 2001.)

ACT 138

H.B. NO. 123

A Bill for an Act Relating to Speeding.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291C-104, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§291C-104)]~~ **Speeding in a school zone or construction area.** (a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a school zone or a construction area. Appropriate law enforcement personnel may enforce the maximum speed limits established for school zones and construction areas.

(b) ~~[Notwithstanding section]~~ Section 291C-102[,] notwithstanding, the director of transportation and the counties, in their respective jurisdictions, shall establish maximum speed limits for school zones and construction areas[,] and shall require the owner, general contractor, or other person responsible for construction to provide proper signs in ~~[that area.]~~ construction areas. The director of transportation shall place official signs in school zones.

Signs posted pursuant to this subsection shall be plainly visible at all times under ordinary traffic conditions.

(c) Any person who violates this section shall be fined \$250.

~~[(e)]~~ (d) For purposes of this section~~[- the term “construction”]~~:

“Construction area” includes any area in which there is occurring the installation, construction, or demolition of connections for streets, roads, driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping, or grading within the highway rights-of-way, including aboveground and underground utility work, excavation and backfilling of trenches or other openings in state highways, the

restoration, replacement, or repair of the base course, pavement surfaces, highway structures, or any other highway improvements.

“School zone” means every street and all public property in the vicinity of a school as designated by the department of transportation and the counties, in their respective jurisdictions.

[(d)] (e) The director shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

ACT 139

H.B. NO. 168

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish a task force to comprehensively review, evaluate, and recommend changes to Hawaii’s election laws regarding vote tabulation, with particular consideration of automatic recount and contest procedures, to ensure the integrity and certainty of the State’s electoral process.

SECTION 2. (a) There is established within the office of the lieutenant governor for administrative purposes the elections review task force to comprehensively review, evaluate, and recommend changes to Hawaii’s election laws to ensure the integrity and certainty of the State’s electoral process. The task force shall consider the following:

- (1) The adequacy of the law with respect to vote tabulation and contest procedures; and
- (2) The feasibility of implementing an automatic recount and improved contest procedure.

In conducting this study, the task force shall consider vote tabulation and contest procedures used or proposed for use in other states.

(b) The task force shall consist of nine members. The chief election officer, or designated representative, shall serve as the chair of the task force. The remaining members shall be representative of the major political parties, have prior elections administration experience, and be appointed in the following manner:

- (1) Two members shall be appointed by the governor;
- (2) Two members shall be appointed by the president of the senate;
- (3) One member shall be appointed by the minority leader of the senate;
- (4) Two members shall be appointed by the speaker of the house of representatives; and
- (5) One member shall be appointed by the minority leader of the house of representatives.

(c) The members of the task force shall serve without pay, but may be reimbursed for actual and necessary expenses incurred in carrying out their duties.

SECTION 3. The task force shall submit its study of Hawaii's election laws with its findings and recommendations, including any proposed legislation, to the legislature not later than twenty days prior to the convening of the regular session of 2002.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the elections review task force to carry out the purposes of this Act.

The sum appropriated shall be expended by the office of elections for the purposes of this Act.

SECTION 5. The task force shall terminate upon the adjournment of the regular session of 2002.

SECTION 6. This Act shall take effect upon its approval; provided section 4 shall take effect on July 1, 2001.

(Approved May 24, 2001.)

ACT 140

H.B. NO. 508

A Bill for an Act Relating to Irrigation Projects

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 167-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All irrigation projects established pursuant to this chapter shall be administered by the board of agriculture. In making the final determination to establish a project, the board shall:

- (1) Determine the proportion of acreage assessments to be borne by the agricultural land and pasture land within the project; and
- (2) [Cause to be prepared by] Have the engineering program manager prepare a map setting forth in detail the exterior boundaries of the lands to be included within the project and an acreage assessment roll listing all known land occupiers whose lands are to be included within the project. The proportion of acreage assessments to be borne by pasture land, at the discretion of the board, may be less than but not more than the proportion to be borne by agricultural land, in which event the agricultural land shall be first served with water in times of drought or shortage of supply. The proportions to be borne by agricultural and pasture lands shall be certified by the board and shall not be changed after final determination to establish the project, except in conjunction with a redefinition of the boundaries of or consolidation or separation of the project, and then only in the manner and within the limitations specified in conjunction therewith.

The board shall determine and certify on or before ~~[March 31]~~ June 30 of each year the amount of acreage assessments necessary in that ~~[calendar]~~ fiscal year for the acquisition, construction, operation, and maintenance of irrigation facilities for each project, and the acreage of agricultural and pasture land of each land occupier within

the project. The department shall immediately notify the land occupiers [by certified mail or registered letter] of the amounts assessed on the respective properties and the payment due date.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

ACT 141

H.B. NO. 869

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 155-1, Hawaii Revised Statutes, is amended by amending the definition of “qualified farmer” to read:

““Qualified farmer” means a person of proven farming ability who operates the person’s own farm on land owned by the person in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote most of the person’s time or who derives a major portion of the person’s net cash income from direct participation in farming in its broadest sense. It includes:

- (1) Hawaii partnerships controlled [~~to the extent of~~] by at least seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10;
- (2) Small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers; [and]
- (3) Corporations incorporated in the State primarily for agricultural production purposes; actively engaged in agricultural production for a minimum of two years; and with at least seventy-five per cent of each class of stock owned by [~~residents of this State.~~] persons who are residents of this State or entities that are domiciled in this State;
- (4) Trusts with situs in Hawaii in which the trustee or other individual or entity in control of the operations of the trust would qualify and meet the eligibility requirements of section 155-10; and
- (5) Any other legal entity recognized by the State that conducts business in the State and that is capable of acquiring, holding, encumbering, transferring, or otherwise administering property, whether real or personal, or tangible or intangible, and which entity is owned and controlled by persons or other entities, at least seventy-five per cent of which would qualify and would meet the eligibility requirements of section 155-10.”

SECTION 2. Section 155-10, Hawaii Revised Statutes, is amended to read as follows:

“§155-10 General eligibility requirements for loans. To be eligible for loans under this chapter, an applicant shall be:

- (1) A qualified farmer, a person under the new farmer program, or a part-time farmer;
- (2) A citizen of the United States who has resided in the State for at least three years, or any permanent resident alien who has resided in the State for at least three years; provided that this requirement shall not apply to applicants for class "D" loans who otherwise qualify.¹ [~~In the case of partnerships and corporations, the residence requirement must be met by seventy-five per cent of the members or stockholders~~];
- (3) A sound credit risk with the ability to repay the money borrowed; and
- (4) Willing to carry out recommended farm management practices."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Note

1. Period should be bracketed.

ACT 142

H.B. NO. 1115

A Bill for an Act Relating to the Admissibility of Paid Bills in Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide that in civil proceedings, a paid bill for goods or services is presumed to be authentic and to embody fair and reasonable charges for the itemized goods or services without the testimony of the provider of the goods or services.

SECTION 2. Chapter 626-1, Hawaii Revised Statutes, is amended by amending subsection (c) of Rule 303 to read as follows:

"(c) Presumptions. The following presumptions, and all other presumptions established by law that fall within the criteria of subsection (a) of this rule, are presumptions imposing the burden of producing evidence:

- (1) Money delivered by one to another. Money delivered by one to another is presumed to have been due to the latter.
- (2) Thing delivered by one to another. A thing delivered by one to another is presumed to have belonged to the latter.
- (3) Obligation delivered up to the debtor. An obligation delivered up to the debtor is presumed to have been paid.
- (4) Obligation possessed by creditor. An obligation possessed by a creditor is presumed not to have been paid.
- (5) Payment of earlier rent or installments. The payment of earlier rent or installments is presumed from a receipt for later rent or installments.
- (6) Things possessed. The things which a person possesses are presumed to be owned by the person.
- (7) Exercise of act of ownership. A person who exercises acts of ownership over property is presumed to be the owner of it.
- (8) Judgment determines, sets forth rights of parties. A judgment, when not conclusive, is presumed to correctly determine or set forth the rights of the parties, but there is no presumption that the facts essential to the judgment have been correctly determined.
- (9) Writing. A writing is presumed to have been truly dated.

- (10) Letter properly addressed and mailed. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.
- (11) Trustee's conveyance to a particular person. A trustee or other person, whose duty it was to convey real property to a particular person, is presumed to have actually conveyed to the person when such presumption is necessary to perfect title of such person or the person's successor in interest.
- (12) Ancient document affecting real or personal property interest. A deed or will or other writing purporting to create, terminate, or affect an interest in real or personal property is presumed authentic if:
 - (A) It is at least twenty years old;
 - (B) It is in such condition as to create no reasonable suspicion concerning its authenticity;
 - (C) It was kept, or if found was found, in a place where such writing, if authentic, would be likely to be kept or found; and
 - (D) Persons having an interest in the matter have been generally acting as if it were authentic.
- (13) Book purporting to be published by public authority. A book purporting to be printed or published by public authority is presumed to have been so printed or published.
- (14) Book purporting to contain reports of adjudged cases. A book purporting to contain reports of cases adjudged in the tribunals of the state or nation where the book is published is presumed to contain correct reports of such cases.
- (15) Continuation of a fact, condition, or state. A fact, condition, or state of things is presumed to continue.
- (16) Paid bills. A bill for goods or services that has been paid is presumed to be authentic and to embody fair and reasonable charges for the itemized goods or services."

SECTION 3.¹ This Act shall take effect on January 1, 2002.

(Approved May 24, 2001.)

Note

- 1. No Ramseyer clause.

ACT 143

H.B. NO. 1345

A Bill for an Act Relating to Energy Content of Fuels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that alternative transportation fuels could provide a substantial part of Hawaii's transportation energy demand and that local production of these fuels could diversify energy supplies while producing environmental and economic benefits to the public.

The legislature also finds that vehicles that operate on fuels containing less energy per gallon require more gallons of fuel to travel the same distance as those using fuels with more energy. However, motor fuels other than liquefied petroleum gas are currently taxed at the same per-gallon rate. Therefore, several alternative fuels are put at a disadvantage on a cost-per-mile basis and would bear a disproportionate share of the highway tax burden.

The legislature finds and declares that there is a need to remove unnecessary disincentives to the use of alternative fuels, by adjusting transportation fuel tax rates to reflect energy content of alternative fuels, and to provide an incentive to the use of these fuels by providing reduced tax rates for several years.

SECTION 2. Section 243-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Alternative fuel” means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five per cent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; biodiesel; mixtures containing twenty per cent or more by volume of biodiesel with diesel or other fuels; fuels (other than alcohol) derived from biological materials; and any other fuel that is substantially not a petroleum product and that the governor determines would yield substantial energy security benefits or substantial environmental benefits.”

SECTION 3. Section 243-4, Hawaii Revised Statutes, is amended to read as follows:

“§243-4 License taxes. (a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons who are not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax hereby imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent[-];
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent[-];
- (3) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), and other than an alternative fuel, sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 16 cents state tax, and in addition thereto such amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5[-];
- (4) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), and other than an alternative fuel, sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 16 cents state tax, and in addition thereto such amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5[-];
- (5) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), and other than an alternative fuel, sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 16 cents state tax, and in addition thereto such amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5[-]; and
- (6) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), and other than an alternative fuel, sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 16 cents state tax, and in addition thereto such amount, to be known as

the “county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from such other evidence as the department may require, that liquid fuel other than fuel mentioned in paragraphs (1) and (2) is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall ~~prescribe~~ adopt rules to administer such refunds.

(b) Every distributor of diesel oil ~~shall~~, in addition to the tax required by subsection (a), shall pay a license tax to the department for each gallon of such diesel oil sold or used by the distributor for operating a motor vehicle or motor vehicles upon public highways of the State. The rates of the additional tax hereby imposed are as follows:

- (1) For each gallon of diesel oil sold or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, 15 cents state tax, and in addition thereto such amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5[-];
- (2) For each gallon of diesel oil sold or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, 15 cents state tax, and in addition thereto such amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5[-];
- (3) For each gallon of diesel oil sold or used in the county of Maui, or sold in any other county for ultimate use in the county of Maui, 15 cents state tax, and in addition thereto such amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5[-]; and
- (4) For each gallon of diesel oil sold or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, 15 cents state tax, and in addition thereto such amount, to be known as the “county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in such form as the department shall prescribe, to the distributor, or the distributor who uses diesel oil signs such certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to (4) shall not be applicable. In the event a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall ~~prescribe~~ adopt rules to administer the refunding of such taxes.

(c) The tax shall not be collected in respect to any ~~[liquefied petroleum gas,] benzol, benzene, toluol, [or] xylol, or alternative fuel~~ sold for use other than for operating internal combustion engines. With respect to these products, other than ~~[liquefied petroleum gas,] alternative fuels~~, the department by ~~[regulation]~~ rule shall provide for the reporting and payment of the tax and for the keeping of records in respect thereto, in such manner as to collect, for each gallon of such product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to ~~[liquefied petroleum gas,] alternative fuels~~, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any ~~[liquefied petroleum gas]~~ alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of 1 cent for each gallon of such ~~[liquefied petroleum gas]~~ alternative fuel sold or used by the distributor.
- (2) Every distributor ~~[shall]~~, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of ~~[liquefied petroleum gas]~~ alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate ~~[equal to two-thirds]~~ proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest [cent, and the] one-tenth of a cent, as follows:
 - (A) Ethanol, 0.29 times the rate for diesel;
 - (B) Methanol, 0.22 times the rate for diesel;
 - (C) Biodiesel, 0.50 times the rate for diesel;
 - (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
 - (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to half the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil.

- (3) If any user of ~~[liquefied petroleum gas]~~ alternative fuel furnishes to the distributor a certificate, in such form as the department shall prescribe, or the distributor who uses ~~[liquefied petroleum gas]~~ alternative fuel signs such certificate, certifying that the ~~[liquefied petroleum gas]~~ alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this section shall not be applicable; provided that no certificate shall be required if the ~~[liquefied petroleum gas]~~ alternative fuel is used for fuel and heating purposes in the home. In the event a certificate is not or cannot be furnished and the ~~[liquefied petroleum gas]~~ alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by such paragraphs. The department shall ~~[prescribe]~~ adopt rules [and regulations] to administer the refunding of such taxes imposed.

(d) No tax shall be collected in respect to any liquid fuel, including diesel oil and liquefied petroleum gas, shown to the satisfaction of the department to have been sold for use in and actually delivered to, or sold in, the county of Kalawao.”

SECTION 4. Section 243-5, Hawaii Revised Statutes, is amended to read as follows:

“§243-5 County fuel tax. The amount of the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, respectively, shall be determined by resolution of the county or the city council of each county adopted in the manner provided by law relating to resolutions involving the expenditure of public money. The amount fixed by the resolution may be, per gallon, one or more cents or a fraction of a cent or both, or it may be zero. The amount fixed for alternative fuels may be proportional to the energy contents of the fuels, as determined by their lower heating values, times one-

half. No resolution shall be adopted until the county or the city council shall conduct a public hearing on the amount of tax proposed. Public notice of the hearing shall be given in the county at least twice within a period of thirty days immediately preceding the date of hearing. If the resolution is adopted, it shall take effect on the first day of the second month following the date of adoption of the resolution. The county or the city council shall notify the department of taxation of any county fuel tax changes within ten days after the resolution is adopted.

Until and unless otherwise provided by resolution adopted as above provided, the amount of the "county of Hawaii fuel tax" shall be ~~[for the period July 1, 1955, to June 30, 1957, 1 cent per gallon and thereafter]~~ zero, the amount of the "city and county of Honolulu fuel tax" shall be 2-1/2 cents per gallon, the amount of the "county of Maui fuel tax" shall be ~~[for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter]~~ 2 cents per gallon, and the amount of the "county of Kauai fuel tax" shall be ~~[for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter]~~ 2 cents per gallon."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2001.

(Approved May 24, 2001.)

ACT 144

S.B. NO. 105

A Bill for an Act Relating to Kikala-Keokea.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the destruction of Kalapana by lava flow displaced a tightly knit community with a truly Hawaiian lifestyle. In 1938, the United States Congress enacted Public Law 680, the Kalapana Extension Act, providing that native Hawaiian residents of the area were to be provided with leases for homesites and that fishing was to be permitted only by native Hawaiian residents of the area or adjacent villages, and by visitors under their guidance.

The continuation of the unique way of life of the Hawaiian residents of Kalapana was disrupted by volcanic eruptions and lava flows which began on January 3, 1983, destroying one of the last Hawaiian settlements on the island of Hawaii.

The legislature recognized this tragedy by enacting Act 314, Session Laws of Hawaii 1991, as amended, authorizing the department of land and natural resources to negotiate long-term leases with qualified, displaced Kalapana families to maintain their heritage in the Kikala-Keokea homestead area adjacent to the Kalapana-Kapoho Beach road. The site allows the Kalapana families to develop the land in a manner that will enable them to continue their traditional way of life by raising small animals, planting sustenance crops, growing herbal medicines and gathering additional food resources from the nearby ocean and uplands.

Act 314 also stipulated that the department of land and natural resources or its designated agency subdivide and create a residential subdivision in the Kikala-Keokea homestead area that will be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, the development and improvement of land, and the

construction of units thereon; provided that it meets the minimum requirements of health and safety.

Prior to the expiration of Act 314, the department of land and natural resources entered into lease arrangements with forty-eight of the fifty-eight families who met both of the eligibility criteria set forth under the Act. However, the forty-eight Hawaiian families have not been able to use their leases since the project does not meet the minimum standards due to a lack of water.

The purpose of this Act is to:

- (1) Transfer funds that were previously appropriated for a low-interest loan program under Act 242, Session Laws of Hawaii 1991, from the former housing finance and development corporation's (now housing and community development corporation of Hawaii) housing finance revolving fund to the department of land and natural resources for deposit into the infrastructure development fund for the development of infrastructure at the Kikala-Keokea homestead area;
- (2) Establish a new infrastructure development fund to be administered by the department of land and natural resources for the development of infrastructure at Kikala-Keokea, and appropriate \$1,750,000 from the infrastructure development fund to be matched by the office of Hawaiian affairs on a dollar-for-dollar basis, up to a maximum of \$1,350,000, so that the leases can be honored and the community reestablished; and
- (3) Upon fulfillment of the purposes set forth in paragraphs (1) and (2), require that all unexpended or unencumbered moneys that were appropriated by the legislature or remaining in the infrastructure development fund be transferred to the credit of the Kikala-Keokea housing revolving fund, which is created to provide low interest loans for home construction for Kikala-Keokea leaseholders who have been denied loans from traditional financial institutions. The Kikala-Keokea housing revolving fund is to be administered by the housing and community development corporation of Hawaii.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Infrastructure development fund; establishment. (a) There is established in the state treasury the infrastructure development fund to be administered by the department of land and natural resources. Funds transferred or appropriated by the legislature and moneys received or collected by the department of land and natural resources, as authorized by the legislature, shall be deposited into the infrastructure development fund.

(b) The infrastructure development fund shall be used to provide funding for infrastructure development in the Kikala-Keokea area on the island of Hawaii to benefit residents of Kalapana who have been dispossessed of their homes and lands as a result of the continued volcanic eruptions on the island of Hawaii, which began on January 3, 1983. Proceeds of this fund may be used for necessary expenses in the administration of the fund.

(c) Upon fulfillment of the purposes of this section, any unexpended or unencumbered funds appropriated by the legislature or remaining in the infrastructure development fund as of the close of business on June 30, 2004, shall not lapse into that fund or to the credit of the general fund, but shall be transferred to the credit of the Kikala-Keokea housing revolving fund established in section 201G- as of that date; provided that any unexpended or unencumbered moneys that were provided by the office of Hawaiian affairs and deposited into the infrastructure development fund for the purpose of infrastructure development shall be refunded to the

office of Hawaiian affairs upon the completion of the fund's intended purpose. No funds shall be transferred until all funding commitments entered into by the department of land and natural resources to complete the design and construction of infrastructure improvements have been executed."

SECTION 3. Chapter 201G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201G- Kikala-Keokea housing revolving fund; established. (a) There is established in the state treasury the Kikala-Keokea housing revolving fund to provide low interest loans for home construction for Kikala-Keokea leaseholders who have been denied loans from traditional financial institutions. The revolving fund shall be administered by the housing and community development corporation of Hawaii.

(b) The rate of interest on loans executed pursuant to this section shall not exceed three per cent per year and interest earnings on loans made pursuant to this section may be used for administrative and other expenses necessary for administering the loan program. Guidelines shall be established by the housing and community development corporation of Hawaii with respect to loan terms and loan qualification criteria. Moneys appropriated for the purposes of this section shall be deposited into the Kikala-Keokea housing revolving fund; provided that upon fulfillment of the purposes of this section, all unencumbered moneys shall lapse into the state general fund.

(c) The housing and community development corporation of Hawaii shall adopt rules in accordance with chapter 91 to effectuate the purposes of this section."

SECTION 4. Act 242, Session Laws of Hawaii 1991, appropriated funds to the housing finance revolving fund under the housing finance and development corporation, currently known as the housing and community development corporation of Hawaii. The director of finance shall transfer \$1,750,000 appropriated to the housing finance revolving fund under Act 242, Session Laws of Hawaii 1991, as of the close of business on June 30, 2001, to the credit of the infrastructure development fund established in section 2 of this Act. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 5. There is appropriated out of the infrastructure development fund the sum of \$1,750,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the development of infrastructure at the Kikala-Keokea subdivision on the island of Hawaii; provided that no funds shall be released unless matched on a dollar-for-dollar basis by the office of Hawaiian affairs up to a maximum of \$1,350,000.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act; provided that:

- (1) All funding commitments to complete the design and construction of infrastructure improvements shall be agreed upon in a memorandum of agreement between the department of land and natural resources and the office of Hawaiian affairs before any moneys are disbursed; and
- (2) Any funds transferred from the infrastructure development fund to the Kikala-Keokea housing revolving fund pursuant to this Act shall be expended by the housing and community development corporation of Hawaii.

SECTION 6. New statutory material is underscored.¹

ACT 145

SECTION 7. This Act shall take effect on June 29, 2001.

(Approved May 24, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 145

S.B. NO. 423

A Bill for an Act Relating to Civil Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 657-5, Hawaii Revised Statutes, is amended to read as follows:

“§657-5 Domestic judgments and decrees. Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and [a hearing-] the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

ACT 146

S.B. NO. 905

A Bill for an Act Relating to the Enforcement of the Lobbyist Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 97-6, Hawaii Revised Statutes, is amended as follows:
1. By amending subsection (a) to read:

“(a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

- (1) Initiate, receive, and consider ~~[complaints]~~ charges concerning alleged violations of this chapter, and investigate or cause to be investigated on a confidential basis, the activities of any person to determine whether the person is in compliance with this chapter;

~~[(2) Refer for prosecution any violation of section 97-2, 97-3, or 97-5;~~

- ~~(3)]~~ (2) Prescribe forms for the statements and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;

- [4)] (3) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion;
- [5)] (4) Issue subpoenas, administer oaths, and exercise those powers conferred upon the commission by section 92-16; ~~and~~
- [6)] (5) Adopt ~~sueh~~ rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration ~~[thereof,]~~¹ of this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by, the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law[-]; ~~and~~
- (6) Have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within three years of an alleged violation of this chapter. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this chapter."

2. By amending subsection (c) to read:

“(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter ~~[or of the code of ethics adopted by the constitutional convention]~~ has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the commission’s issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator’s written response thereto shall become public records. The hearing shall be held within ninety days of the commission’s issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period.

All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission’s findings ~~[must]~~ shall be based [u]pon on competent and substantial evidence.

All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of ~~[sueh]~~ the record shall be available only to the complainant

and the alleged violator at their own expense~~[-and the]~~. All fees [therefor] collected under this chapter shall be deposited [in] into the general fund.”

SECTION 2. Section 97-7, Hawaii Revised Statutes, is amended to read as follows:

“§97-7 Penalties; administrative fines. (a) Any person who:

- (1) Wilfully fails to file any statement or report required by this chapter;
- (2) Wilfully files a statement or report containing false information or material omission of any fact;
- (3) Engages in activities prohibited by section 97-5; or
- (4) Fails to provide information required by section 97-2 or 97-3;

shall be ~~[guilty of a petty misdemeanor.~~

~~(b) After holding a contested case hearing under section 97-6.5, the state ethics commission may assess an administrative fine that shall not exceed \$500.] subject to an administrative fine imposed by the commission that shall not exceed \$500 for each violation of this chapter. All fines collected under this section shall be deposited into the general fund.~~

(b) No fine shall be assessed unless:

- (1) The commission convenes a hearing in accordance with section 97-6(c) and chapter 91; and
- (2) A decision has been rendered by the commission.”

SECTION 3. Section 97-6.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan and a long-term care benefits plan; provided that the fund, including rate credits or reimbursements from any carrier or self-insured plan or any earning or interest derived therefrom, may be used to stabilize health benefits plan or long-term care benefits plan rates, and with approval of the legislature through appropriation of funds for other expenses necessary to effectuate these purposes. Notwithstanding any law to the contrary, any rate credit or reimbursement from any carrier or self-insured plan in excess of funds used to stabilize health benefits plan or long-term care benefits plan costs, and for

other expenses authorized by the legislature or any earning or interest derived therefrom [shall]:

- (1) Shall be returned to the State or the county for deposit into the appropriate general fund if the moneys are returned from:
 - [(1-)] (A) A plan that provides health benefits to retirees or the surviving spouses of deceased retirees or employees killed in the performance of their duty whose coverage is financed in whole or in part by the State or by the county; or
 - [(2-)] (B) A plan that provides health benefits to employees; provided that the amount returned to the general fund shall be only that portion financed by the State or by the county on behalf of the employee[-]; and
- (2) As authorized by the board, may be:
 - (A) Returned to identifiable employee-beneficiaries who participated in ascertainable years to create the rate credit or reimbursement or to any other employee-beneficiaries; or
 - (B) Used to reduce the employee-beneficiary's respective share of monthly contributions to a health benefits plan; provided that the amount was derived from employee-beneficiary rate contributions to health benefit plans of employee-beneficiaries who are not participating in a health benefits plan of an employee organization, or interest derived therefrom."

SECTION 2. Section 87-22.3, Hawaii Revised Statutes, is amended to read as follows:

"§87-22.3 Determination of health benefits plans. Pursuant to section 87-4, the board of trustees shall provide health benefits to employee-beneficiaries in the following manner:

- (1) For those employee-beneficiaries who are not participating in a health benefits plan of an employee organization (hereafter "nonparticipating employee-beneficiaries"), the board of trustees shall establish health benefits plans and the requirements for eligibility under the health benefits plans. ~~Any rate credit or reimbursement from any carrier derived from employee-beneficiary rate contributions to health benefits plans of nonparticipating employee-beneficiaries or interest derived therefrom may be used to improve the respective health benefits plans of nonparticipating employee-beneficiaries or to reduce the employee-beneficiary's respective share of monthly contributions to a health plan]; or~~
- (2) For employee-beneficiaries who participate in the health benefits plan of an employee organization, the board of trustees shall pay a monthly contribution for each employee-beneficiary, in the amount provided in section 87-4(a), or the actual monthly cost of the coverage, whichever is less, towards the purchase of health benefits under the health benefits plan of an employee organization."

SECTION 3. Section 87-28, Hawaii Revised Statutes, is amended to read as follows:

"§87-28 Other powers. In addition to the power to administer the fund, the board of trustees may:

- (1) Collect, receive, deposit, withdraw, and invest money on behalf of the fund;

- (2) Appoint an administrator and staff necessary to carry out this chapter, subject to the limitations of available appropriations and chapters 76 and 77 and section 78-1;
- (3) Make payments of periodic charges and ~~[pay for]~~ reasonable expenses incurred to:
 - (A) Perform financial audits of the fund and claims audits of its insurance carriers; or
 - (B) Carry out the purposes of the fund~~;~~, including the return of refunds to employee-beneficiaries; or
- (4) Require any department, agency, or employee of the State and county to furnish information to the board to carry out the purposes of this chapter.”

SECTION 4. There is appropriated out of the Hawaii public employees health fund trust fund the sum of \$24,100,000, or so much thereof as may be necessary for fiscal year 2001-2002, to carry out the purposes of this Act including the payment of administrative expenses, postage, and fees to distribute refunds and to service inquiries from employee-beneficiaries.

SECTION 5. The sum appropriated shall be expended by the department of budget and finance.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2001.

(Approved May 24, 2001.)

ACT 148

S.B. NO. 1050

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that part II (assisting not-for-profit corporations that provide health care facilities to the general public), part III (assisting manufacturing enterprises), part IV (assisting processing enterprises), part V (assisting industrial enterprises), part VI (assisting utilities serving the general public in providing electric energy or gas), and part VII (assisting not-for-profit corporations that provide early childhood education and care facilities serving the general public), chapter 39A, Hawaii Revised Statutes, fail to provide for a requirement that would lapse an authorization to issue special purpose revenue bonds that are not timely issued.

The purpose of this Act is to amend the respective subsections of part II, part III, part IV, part V, part VI, and part VII, chapter 39A, Hawaii Revised Statutes, to provide that an authorization to issue special purpose revenue bonds shall not exceed a period of five years from its enactment.

SECTION 2. Section 39A-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each single project or multiproject program for health care facilities provided to the general public by not-for-profit

corporations shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.”

SECTION 3. Section 39A-77, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their respective date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.”

SECTION 4. Section 39A-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their respective date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.”

SECTION 5. Section 39A-157, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each project or multiproject program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds

registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.”

SECTION 6. Section 39A-197, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each single project or multiproject program for each type of utility serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each energy project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine.”

SECTION 7. Section 39A-227, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Special purpose revenue bonds for each single project or multi-project program for early childhood education and care facilities serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest[-]; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of

payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

ACT 149

S.B. NO. 1062

A Bill for an Act Relating to the Conversion of Professional and Vocational Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§436B- Conversion of license. (a) Notwithstanding any other provision of law to the contrary, a licensee who has converted its form of business entity in accordance with sections 415-77.5, 415A-16.5, 415B-87, 425-192, 425D-1110, and 428-902.5, and desires to continue engaging in a profession or vocation subject to this chapter in its new form of business entity shall:

- (1) File an application for conversion of a license and pay the initial application fee specified in the statutes or rules of the profession or vocation, within thirty calendar days after the effective date of the conversion; and
- (2) Continue to meet the other licensing requirements of that profession or vocation.

(b) Failure to comply with the requirements of this section shall cause the license to be automatically forfeited. A licensee whose license is forfeited shall not engage in the profession or vocation until the license is restored or the licensee obtains a new license.”

SECTION 2. Section 436B-7, Hawaii Revised Statutes, is amended to read as follows:

“§436B-7 Powers and duties of licensing authority. In addition to any other powers and duties authorized by law, each licensing authority may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and conduct contested case proceedings pursuant to chapter 91;
- (2) Grant, deny, convert, forfeit, renew, reinstate, or restore licenses, including the issuance of conditional licenses;

- (3) Revoke, suspend, or otherwise limit the license of any licensee for any violation of the provisions in this chapter, the licensing laws, or any rule or order of the licensing authority;
- (4) Develop requirements for licensure through the applicable licensing law or rules;
- (5) Investigate and conduct hearings regarding any violation of this chapter, the licensing laws, and any rule or order of the licensing authority;
- (6) Monitor the scope of practice of the profession or vocation regulated by the licensing authority;
- (7) Prepare, administer, and grade examinations[¹]; provided that the licensing authority may contract with a testing agency to provide those services, and the licensing authority may also reserve the right to modify, amend, change, or regrade the examination;
- (8) Create fact-finding committees which may make recommendations to the licensing authority for its deliberations;
- (9) Contract with qualified persons[¹] including investigators[¹] who may be exempt from chapters 76 and 77 and who shall assist the licensing authority in exercising its powers and duties; and
- (10) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the licensing authority's power and duties, including the authority to conduct contested case proceedings under chapter 91."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 150

S.B. NO. 1113

A Bill for an Act Relating to Public Assistance.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds there is a need to clarify the law with respect to the requirement that the department of human services annually update the actual amount of the medical assistance liens recorded in the bureau of conveyances. Consequently, one of the purposes of this Part is to clarify that the update is an internal departmental accounting measure intended to track expenditures by the department and not burden the bureau of conveyances by essentially recording the same lien against the same property year after year. Filing the same lien annually does not attach more interest in the real property than claimed in the first recorded or filed lien, and the issue of an increase in the amount of the lien is already addressed in section 346-29.5(c), Hawaii Revised Statutes (HRS).

This Part further clarifies that in addition to an agreement that future grants of assistance constitute a real property lien, there is a statutory provision for the placement of real property liens.

In the enforcement of a lien as a claim under section 346-37, HRS, against the estate of a recipient, there are instances the department may need to initiate probate proceedings. Therefore, the proposed amendment clarifies that the department may initiate probate proceedings.

Finally, other technical and grammatical corrections have been made.

SECTION 2. Section 346-29.5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) The department may also place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for six months or longer without a discharge plan.

(1) The department may not place a lien on the recipient’s home if the recipient’s:

- (A) Spouse;
- (B) Minor, blind, or disabled child; or
- (C) Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient’s admission to the medical institution;

is lawfully residing in the home.

(2) The department shall not recover funds from the lien on the recipient’s home when:

- (A) A sibling who was residing in the home for a period of at least one year immediately before the date of the recipient’s admission to the medical institution; or
- (B) A son or daughter who was residing in the recipient’s home for a period of at least two years immediately before the date of the recipient’s admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to the recipient which permitted such recipient to reside at home rather than in an institution;

lawfully resides in the home and has lawfully resided in the home on a continuous basis since the date of the recipient’s admission to the medical institution.

(3) The department also shall not recover funds from the lien if the recipient has a surviving spouse; or surviving minor, blind, or disabled child.

(4) Any lien imposed with respect to this subsection shall be dissolved upon the individual’s discharge from the medical institution and return home.

(c) The agreement in subsection (a) or the lien in subsection (b) shall be recorded in the bureau of conveyances, or filed in the office of the assistant registrar of the land court. When the agreement [~~for the~~] or lien is recorded in the bureau of conveyances, the registrar shall forthwith cause the same to be indexed in the general

indexes of the bureau of conveyances. From and after the recording in the bureau of conveyances the [lien] liens shall attach to all interests in real property then owned by the person and not registered in the land court, and from and after the filing thereof in the office of the assistant registrar of the land court, the [lien] liens shall attach to any such interest in land then registered therein. The [lien] liens shall be for all amounts of assistance, unless otherwise provided by rules adopted pursuant to chapter 91, then or thereafter paid in accordance with the programs from which the person receives assistance. The department shall be obligated to annually update, as an accounting measure, the actual amount of the [lien] liens recorded in the bureau of conveyances.

(d) The department shall issue certificates of release or partial release upon satisfaction or partial satisfaction of the [lien] liens. Certificates of release or partial release of any real property lien issued by the director ~~[of the department]~~ or the director's authorized representative shall be recorded in the bureau of conveyances. The director shall consider issuing conditional certificates of release in cases of extreme hardship as set out in rules adopted under chapter 91. The registrar shall forthwith cause the same to be indexed in the general indexes in a like manner as the original [lien] liens. No fee shall be charged for any of the recording. The [lien] liens herein provided for shall take priority over any other lien subsequently acquired or recorded except tax liens and except that, in the estate of a beneficiary, the actual funeral expenses, the expenses of the last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate, shall have priority and preference over the [lien] liens herein imposed, and over any claim against an estate filed under section 346-37.

The [lien] liens shall be enforceable by the department by suit in the appropriate court or shall be enforceable as a claim against the estate of the recipient under section 346-37, having priority over all other debts except taxes, the actual funeral expenses, the expenses of last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate.

The [lien] liens shall be enforceable as a claim under section 346-37 against the estate of a recipient under any circumstances if the estate is admitted to probate at the instance of any interested party ~~[other than the department]~~.

Whenever the department is satisfied that the collection of the amount of assistance paid a recipient will not be jeopardized or that the release or waiver of the priority of the [lien] liens against the recipient's property, in whole or in part, is necessary to provide for the maintenance or support of the recipient, the recipient's spouse, or any minor or incapacitated child, it may release or waive the priority of the [lien] liens with respect to all or any part of the real property.

The recipient, the recipient's heirs, personal representatives, or assigns may discharge the [lien] liens at any time by paying the amount thereof to the department which shall execute a satisfaction thereof. The department may at its discretion compromise the collection of any such [lien] liens, but such compromise shall be made only when the recipient, the recipient's heirs, personal representatives, or assigns prove that the collection of the full amount of the [lien] liens or claim would cause undue hardship or the [lien] liens or claim ~~[is]~~ are otherwise uncollectible.

The proceeds from the enforcement, payment, or compromise of the [lien] liens shall be paid into the treasury of the State. If the amount of assistance reflected by the proceeds was paid in part by federal funds, the proper portion of these funds shall be paid by the director of finance to the treasury of the United States. The director of finance shall thereupon report such payment to the department. If the federal funds are not paid directly into the treasury of the United States, these federal

funds shall be credited by the director of finance to the department for expenditure for assistance without need for further appropriation.

If at any time the federal government, or any agency or instrumentality thereof, requires, as a condition to any grant of assistance, the performance of conditions inconsistent with this section, or desisting from actions provided by this section, the governor may suspend, upon a finding to that effect and to the extent of such requirement, any provisions of this section to the end that such federal assistance may be received.

The department shall submit an annual report to the legislature, which shall include a list of liens held by the department on real property. This report shall include[,] but not be limited to a description of the value of the liens, the legal status of the liens, and when the liens were initiated.

The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

PART II

SECTION 3. The purpose of this Part is to authorize the department of human services to create a welfare safety net program called “Keeping Hope Alive” to assist families that will stop receiving public assistance.

SECTION 4. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Welfare safety net program; department of human services. The department of human services may create a welfare safety net program entitled “Keeping Hope Alive” to assist working families that will be disqualified from receiving further public assistance as a consequence of reaching the five-year time limit set by the federal Personal Responsibility and Work Opportunity Act of 1996.”

PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 151

S.B. NO. 1126

A Bill for an Act Relating to Criminal History.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 146, Session Laws of Hawaii 2000, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval[; provided that section 1 of this Act shall be repealed on June 30, 2001].”

SECTION 2. There is appropriated out of the state criminal history record improvement revolving fund the sum of \$65,000, or so much thereof as may be necessary for fiscal year 2001-2002, to effectuate the purposes of this Act. The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect on June 29, 2001; provided that section 2 shall take effect on July 1, 2001.

(Approved May 24, 2001.)

ACT 152

S.B. NO. 1164

A Bill for an Act Relating to the Forest Stewardship Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 195F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a special fund within the state treasury known as the forest stewardship fund which shall be used as follows:

- (1) Payments shall be made by the board pursuant to agreements entered into with qualified landowners to further the purposes of this chapter; [and]
- (2) Moneys collected from the harvest of non-native forest products from forest reserves, from the harvest of native forest products from degraded forests as defined in section 186-5.5, within forest reserves, from forest products found dead and lying on the ground, or from the sale of tree seedlings from the state nurseries, shall be used for the following activities:
 - (A) Replanting, managing, and maintaining designated timber management areas;
 - (B) Enhancing the management of public forest reserves with an emphasis on restoring degraded koa forests; and
 - (C) Developing environmental education and training programs pertaining to sustainable forestry;

provided that ~~[funding for]~~ the ~~[purposes]~~ activities described in subparagraphs (B) and (C) may not ~~[occur]~~ be funded unless the activities described in approved management plans pertaining to subparagraph (A) are adequately funded~~[-]~~;

and

- (3) Moneys deposited into the fund as authorized by section 247-7 may also be used by the department to administer the program.”

SECTION 2. There is appropriated out of the forest stewardship fund the sum of \$20,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be used toward administering the forest stewardship program.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 24, 2001.)

ACT 153

H.B. NO. 596

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431P-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the general powers under subsection (a), the fund shall have the specific power to:

- (1) Adopt and administer a plan of operation in accordance with section 431P-7, and a manual of rules and rates to provide persons having an insurable interest in eligible property with insurance coverage provided by the fund;
- (2) Authorize the provision of hurricane coverage by the fund for real property and tangible personal property located in or on real property and establish limits of liability for specific coverages within the range of authorized coverage;
- (3) Adopt actuarially sound rates based on reasonable assumptions relative to expectations of hurricane frequency and severity for all coverage provided under policies or endorsements issued by the fund. Rates adopted shall be subject to approval by the commissioner pursuant to article 14 of chapter 431. Rates adopted shall provide for classification of risks and shall include past and prospective losses and expense experience in this State;
- (4) Adopt procedures, guidelines, and surcharges applicable to policies of hurricane property insurance issued in connection with an underlying property policy issued by an unauthorized insurer;
- (5) Adopt any form of insurance policy necessary for providing policies of hurricane property insurance by the fund, with the approval of the commissioner;
- (6) Issue policies of hurricane property insurance and pay claims for coverage over the mandatory deductible or other deductible provided in the plan of operation or any manual of rules and rates adopted under the plan of operation;
- (7) Require every licensed property and casualty insurer transacting direct property insurance business in this State to act as a servicing facility, and by contract with that insurer authorize the insurer to inspect eligible properties, service policies and policyholders of hurricane property insurance, provide claim services, and perform any other duties as authorized by the fund for applicants to the fund and those insured by it;
- (8) (A) Assess all licensed property and casualty insurers the amounts which, together with the other assets of the fund, are sufficient to meet all necessary obligations of the fund. The assessment shall be made on the insurer's gross direct written premiums for property and casualty insurance in this State for the preceding

calendar year. The rate of assessment in a year in which a covered event has not occurred shall be 3.75 per cent and shall not include the insurer's gross direct written premiums for motor vehicle insurance in this State; provided that following a covered event, the rate of assessment may be increased to an amount not to exceed five per cent and may include the insurer's gross direct written premiums for motor vehicle insurance in this State. This increase shall remain in effect until such time as all claims and other obligations, including but not limited to bonds and notes, arising out of a covered event shall have been fully discharged. An insurer authorized to provide comparable coverage under section 431P-10(b) and which is providing hurricane property insurance in the State shall be assessed an amount that excludes gross direct written premiums for property insurance in this State. The assessment for a year in which a covered event has not occurred shall be collected quarterly during each calendar year;

- (B) In the event of a loss from a covered event the fund, in addition to the assessment in subparagraph (A), shall assess those insurers which acted as servicing facilities during the twelve months ending at the start of the month preceding the month in which the covered event occurs. The total assessment shall be a fixed percentage of the total coverage provided by the fund under its policies of hurricane property insurance during the month preceding the month in which the covered event occurs. The percentage to be used in calculating the total assessment shall be as follows:

- (i) For calendar year 1998, a percentage as fixed by the board in the plan of operation, but in no event shall the total assessment exceed \$500,000,000;
- (ii) For calendar year 1999, 1.125 per cent;
- (iii) For calendar year 2000, 1.25 per cent; and
- (iv) For calendar year 2001, and each calendar year thereafter, 1.5 per cent.

A separate total assessment shall be made for each covered event. The total assessment shall be allocated to each servicing facility based on the proportion of the total amount of the fund's gross direct written premiums for policies of hurricane property insurance serviced by each servicing facility to the total amount of the fund's gross direct written premiums for policies of hurricane property insurance, in each case, during the twelve months ending at the start of the month preceding the month in which the covered event occurs. Assessments made under this subparagraph and those under subparagraph (A) in a year in which a covered event has occurred are due from each insurer based on assessment procedures established by the fund to meet its obligations to policyholders in a timely manner; and

- (C) The fund may exempt or defer, in whole or in part, the assessment of any insurer if the assessment would cause the insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority in this State;
- (9) Develop a program of incentives to encourage insurers to provide policies of hurricane property insurance in the event the commissioner authorizes the provision of comparable insurance pursuant to section 431P-10(b) which may include but are not limited to exemption of the

- insurer's gross direct written premium for property insurance from the assessment pursuant to paragraph (8)(A);
- (10) Develop a credit based on the difference between premiums written in 1993 and the premiums written in 1992 by each property insurer against the assessment for gross direct written premiums written in 1993;
 - (11) Develop procedures regarding policies written by unauthorized insurers comparable to the assessments, surcharges, and other contributions made by insurers authorized to do business in this State;
 - (12) Accumulate reserves or funds, including the investment income thereon, to be used for paying expenses, making or repaying loans or other obligations of the fund, providing loss mitigation incentives, and paying valid claims for covered events insured by the fund;
 - (13) Collect and maintain statistical and other data as may be required by the commissioner;
 - (14) Exempt mortgage transactions from payments of the special mortgage recording fee and provide for maximum limits on or, uniform reduction of the special mortgage recording fee, pursuant to rules adopted by the board;
 - (15) Suspend or reactivate the special mortgage recording fee pursuant to resolution of the board;
 - [(15)] (16) Impose fines for each incident of nonpayment of amounts due to the fund under this chapter; provided that the fines shall not exceed twenty-five per cent of the amount then due;
 - [(16)] (17) Create loss mitigation incentives, including but not limited to premium credits, premium rebates, loans, or cash payments;
 - [(17)] (18) Enter into claims financing transactions, including but not limited to reinsurance transactions, debt transactions, and other transactions incorporating elements of reinsurance, insurance, debt, or equity;
 - [(18)] (19) Establish business and corporate entities or organizations pursuant to the purposes of this chapter; and
 - [(19)] (20) Perform any and all acts reasonably necessary to carry out the purposes of this chapter."

SECTION 2. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The hurricane reserve trust fund shall receive deposits of the special mortgage recording fee established by this chapter. [The] Except as determined by board order, the special mortgage recording fee shall be imposed on each mortgage and each amendment to a mortgage which, in each case, increases the principal amount of the secured debt and which is recorded in the bureau of conveyances of the State under chapter 502 or filed with the assistant registrar of the land court of the State under chapter 501.

The special mortgage recording fee shall be an amount equal to one-tenth of one per cent of the stated principal amount of the debt secured by the mortgage or, in the case of an amendment or refinancing of a mortgage, an amount equal to one-tenth of one per cent of the amount of the increase of the stated principal amount of the secured debt; provided that the board may establish a lower special mortgage recording fee amount pursuant to section 431P-5(b)(14). With respect to an open end revolving loan, the principal amount of the debt on which the special mortgage recording fee is calculated shall be the maximum amount which may be outstanding under the loan at any one time. With respect to a mortgage securing a nonmonetary or inchoate obligation, the principal amount of the debt on which the special mortgage recording fee is calculated shall be the monetary amount which the

mortgagee attributes to the obligation. If the debt is stated in a foreign currency, it shall be converted to U.S. dollars using an exchange rate published in a newspaper of general circulation in this State within one week prior to recordation of the mortgage or amendment of mortgage.

The special mortgage recording fee shall be in addition to any applicable fees under chapter 501 or 502. The special mortgage recording fee shall be submitted to and collected by the bureau of conveyances or the assistant registrar of the land court of the State and shall be deposited into the hurricane reserve trust fund. The special mortgage recording fee shall be submitted at the time the mortgage or amendment of mortgage is recorded together with any related forms or certifications required by the bureau of conveyances or the assistant registrar of the land court of the State.”

SECTION 3. Act 339, Session Laws of Hawaii 1993, as amended by Act 17, Special Session Laws of Hawaii 1995, as amended by Act 222, Session Laws of Hawaii 1997, as amended by Act 151, Session Laws of Hawaii 1999, is amended by amending subsection (d) of section 10 to read as follows:

“(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for each of the fiscal years [1998-1999, 1999-2000, and] 2000-2001 and 2001-2002 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner’s determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on reimbursable general obligation bonds authorized and issued under this section.”

SECTION 4. The special mortgage recording fee established under section 431P-16, Hawaii Revised Statutes, shall be suspended as of July 1, 2001, and shall remain suspended until reactivated by the Hawaii hurricane relief fund’s board of directors.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

ACT 154

H.B. NO. 702

A Bill for an Act Relating to Correctional Health Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that providing for the health care needs of inmates is a priority for the department of public safety. This responsibility requires a program administrator and physicians who are not only experts in the profession, but who also understand the unique aspects of delivering health care services in a correctional environment. Program administrators and physicians who possess these dual qualities demand greater compensation than others, often beyond what the civil service pay scale allows, due to the unusual work conditions and characteristics of the clientele. In light of this, to hire qualified health care administrators and

physicians, the department resorts to contracting for the purchase of professional services.

The purpose of this Act is to establish a correctional health care program within the department of public safety and to allow the department to hire a program administrator and physicians based on specialized abilities, and to provide that the program administrator and physician positions shall be exempt from the civil service process.

SECTION 2. Chapter 353C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353C- Correctional health care program. There is established a correctional health care program within the department. The administrator of the correctional health care program and physicians who provide care to inmates shall be appointed by the director without regard to chapters 76 and 77.”

SECTION 3. Any physician appointed under chapter 76, Hawaii Revised Statutes, and working in the correctional health care program for the department of public safety as of the effective date of this Act shall have the option of:

- (1) Remaining under chapter 76, Hawaii Revised Statutes; or
 - (2) Becoming an exempt employee under section 2 of this Act;
- provided that option (2) shall be exercised within sixty days after this Act takes effect.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 155

H.B. NO. 786

A Bill for an Act Making an Appropriation for Donated Dental Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are twenty-six states that have implemented a donated dental services program for individuals who are elderly, have a disability or mental illness, or are homeless, through the Foundation of Dentistry for the Handicapped (Foundation). The Foundation is a charitable affiliate of the American Dental Association (ADA). It began the first donated dental services program in Colorado and has since established programs in twenty-five other states through funding from the Robert Wood Johnson Foundation, ADA, ADA Health Organization, Oral Health America, and Great West Life Annuity.

The legislature further finds that the donated dental services program links eligible individuals with volunteer dentists who provide needed dental care services. Nationally, over eight thousand dentists and one thousand seven hundred dental laboratories donate more than \$6,000,000 worth of care annually through the donated dental services program. On average, each patient receives over \$1,500 worth of services.

The purpose of this Act is to appropriate funds to implement a statewide donated dental services program for eligible adults.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$41,660 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$41,660 or so much thereof as may be necessary for fiscal year 2002-2003 for a statewide donated dental services program for eligible adults under the National Foundation of Dentistry for the Handicapped program.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

ACT 156

H.B. NO. 962

A Bill for an Act Relating to a Sentencing Simulation Model.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that an accurate profile of existing convicted offenders and the development of tools to predict future criminal offender populations are essential to efficiently manage limited correctional and alternative resources. The legislature further finds that effective sentencing and controlling spiraling correctional costs can be best accomplished through the establishment of a sentencing simulation model (model).

The model will provide the legislature and the criminal justice community with necessary tools to forecast prison populations and ensure efficient allocation of the existing and proposed resources for all convicted defendants. These resources include not only prison beds, but also alternatives to incarceration (e.g., probation, drug courts, and other diversionary programs) and community-based programs.

Of equal importance, the model will permit an assessment of the impact of current and proposed sentencing policies on the existing correctional system and community resources. The model will also permit officials to use different combinations of criminal justice indicators, such as crime rates, convictions, prison populations, juvenile crime, and other objective data to project the impact of proposed policy changes on Hawaii's resources.

The legislature finds that models in other jurisdictions have demonstrated high accuracy rates for their projections, with variances below two per cent. The modeling capability will allow legislators and other criminal justice and corrections officials to propose more meaningful and effective criminal justice and correctional initiatives.

In conjunction with the corrections population management commission's responsibility to recommend cost-effective mechanisms, legislation, and policies to control overcrowding of correctional facilities, and the requirement that such recommendations include estimates of fiscal impact under section 353F-3, Hawaii Revised Statutes, the department of public safety is establishing a sentencing simulation model. The model includes:

- (1) A centralized computer-based criminal defendant population database;
- (2) A computerized network for maintaining the centralized database, including connectivity among the components of the State's criminal

justice and correctional systems to ensure that the centralized database's information is current and accurate; and

- (3) Computer modeling techniques that use information in the centralized database to project the impact of different sentencing policies and proposals on future criminal justice resources and corrections populations.

The sentencing simulation model project was initiated in October 2000 and is supported by two funding sources in its first year: a grant of \$122,130 from the Edward Byrne memorial state and local government formula grant program and \$71,018 in state general funds as the required state match. The first three months have been dedicated to establishing the project by creating the unit, hiring professional staff, and purchasing necessary equipment to support the model. January 2001 marks the onset of the sentencing simulation model project, with Dr. Pablo Martinez of the Texas Criminal Justice Policy Council advising project staff on the development and implementation of the model.

The governor's committee on crime has recommended that the Edward Byrne memorial state and local law enforcement assistance formula grant program award the department of public safety second year funding of \$116,865 to continue the sentencing simulation model project, provided that the State of Hawaii commits \$47,177 to the project.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$47,177 or so much thereof as may be necessary for fiscal year 2001-2002 to develop, implement, and maintain a sentencing simulation model.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

ACT 157

H.B. NO. 1405

A Bill for an Act Relating to Use of Intoxicants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 39 of Act 189, Session Laws of Hawaii 2000, (Relating to Use of Intoxicants) directed the legislative reference bureau to prepare proposed legislation necessary to conform and consolidate the varying statutory provisions of parts I, II, and III of Act 189 and to make necessary amendments to statutes affected by the repeal, effective January 1, 2002, of part VII of chapter 200, parts VII and XIV of chapter 286, and sections 291-4, 291-4.3, 291-4.4, 291-4.5, 291-5, 291-6, and 291-7, Hawaii Revised Statutes.

Part III of Act 189 consolidates all existing provisions relating to driving under the influence of intoxicating liquor or drugs and boating under the influence of intoxicating liquor into a new chapter (codified as chapter 291E, Hawaii Revised Statutes) that provides for both administrative license revocation proceedings and penal sanctions for a single offense relating to operating a vehicle under the influence of an intoxicant. The legislature intends this to ensure that uniform provisions and sanctions apply to impairment involving intoxicating liquor, drugs, and boating. Part III of Act 189 also repeals, effective January 1, 2002, all existing impairment provisions.

The legislature finds that the provisions of part I (relating to penalties for driving under the influence of drugs) are already mirrored in part III of Act 189.¹ However, the failure to insert the provisions of part II (relating to revocation of motor vehicle registration for repeat intoxicated drivers), which took effect September 30, 2000, into part III prior to January 1, 2002, will effectively repeal the amendments made to those provisions by the legislature in Act 189. The legislature also finds that it is necessary to include in this Act related amendments adopted by the legislature in Act 296,² Session Laws of Hawaii 2000, (relating to habitual DUI driver and preliminary alcohol screening devices) to avoid their automatic repeal on January 1, 2002, when part III takes effect.

The legislature further finds that the bureau's proposed legislation prepared in response to the directive of Act 189 is primarily a housekeeping measure. The amendments are of a technical nature, and any that might be characterized as substantive are the result of changes necessitated by the conforming and consolidation of differing provisions adopted by the legislature in Act 189 or Act 296.²

Accordingly, the purpose of this Act is to conform and consolidate the provisions previously adopted by the legislature in Act 189 and Act 296,² Session Laws of Hawaii 2000, relating to operating a vehicle under the influence of an intoxicant, as codified in chapter 291E, Hawaii Revised Statutes.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§200- Records of suspensions and revocations of operating privileges to be maintained. (a) The department shall maintain a record of all persons adjudicated of violations under part III of chapter 291E and the period of suspension or revocation of operator privileges ordered by the director under that part.

(b) The department shall maintain a record of all persons convicted of offenses or violations under part IV of chapter 291E and the period of suspension or revocation of operator privileges ordered by the court under that part.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding four new sections to part III to be appropriately designated and to read as follows:

“§291E-A Failure to surrender number plates. Any person who has had the person's motor vehicle registration revoked pursuant to this part and subsequently fails to comply with an order to surrender all motor vehicle number plates issued to the person, pursuant to chapter 249, shall be guilty of a misdemeanor.

§291E-B Special motor vehicle registration. (a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(j), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; and
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle.

A person to whom a special motor vehicle registration has been granted shall apply to the appropriate county director of finance for special series number plates, as provided in section 249-9.4.

(b) The director shall revoke the special motor vehicle registration if any one of the conditions set forth in the application no longer exist.

(c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.

(d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

§291E-C Transferring title to, or ownership interest in, vehicle prohibited; exceptions. (a) A registered owner shall not sell or transfer title to, or ownership interest in, a motor vehicle during the time period the motor vehicle's registration has been ordered revoked and number plates surrendered or during the time the motor vehicle bears the special series number plates pursuant to section 249-9.4, unless the registered owner applies to the administrative director of the courts, or the administrative director's appointee pursuant to section 291E-1, for consent to transfer title to the motor vehicle. If the director is satisfied that:

- (1) The proposed sale is in good faith and for valid consideration;
- (2) The registered owner will be deprived of the custody and control of the motor vehicle; and

(3) The sale is not for the purpose of circumventing this part, the director may consent to the sale or transfer. If the director consents, the director shall issue a certified copy of the written consent to the registered owner and forward a copy to the appropriate county director of finance.

(b) The county director of finance, upon proper application and the presentation to the director of finance of a certified copy of the director's written consent to the sale or transfer of a motor vehicle, shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

(c) Notwithstanding subsections (a) and (b), if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the motor vehicle registration has been revoked under this part, the county director of finance shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

§291E-D Notice to the department of land and natural resources of suspensions and revocations of operating privileges. The director shall notify the department of land and natural resources of all persons adjudicated of violations under this part and the period of suspension or revocation of operator privileges ordered by the director under this part."

SECTION 4. Section 249-9.4, Hawaii Revised Statutes, is amended to read as follows:

"[~~E~~§249-9.4] Special series number plates. A qualified household member, as defined in section [~~286-251~~], 291E-1, or a co-owner of a motor vehicle owned by [~~an arrestee~~] a respondent under part [XIV] III of [~~this~~] chapter[~~;~~] 291E, who has been granted a special motor vehicle registration under section [~~286-263.6~~], 291E-B, shall apply to the appropriate county director of finance for special [~~license~~] number plates that shall bear a special series of numbers or letter so as to be readily identifiable by law enforcement officers[~~;~~] and readily distinguishable from number

plates or special number plates issued under sections 249-9.1, 249-9.2, and 249-9.3. The director of finance may issue the special series number plates only if:

- (1) The director of finance receives written approval for the issuance of special series number plates from the administrative director of the courts, or the administrative director's appointee ~~[under]~~ pursuant to section ~~[286-251;]~~ 291E-1;
- (2) The qualified household member or a co-owner of the motor vehicle has a ~~[driver's]~~ license that has not expired or been suspended or revoked; and
- (3) The applicant pays a fee for the special ~~[license]~~ series number plates that is equal to the ~~[cost]~~ costs of the ~~[license]~~ plates and tag or emblem, plus the administrative ~~[cost]~~ costs of furnishing the plates and tag or emblem and effecting the registration for each motor vehicle for which special series number plates are issued."

SECTION 5. Section 281-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All licensed premises shall post a sign in or about the premises containing and notifying all customers and other persons of the ~~[penalties of driving]~~ possible sanctions that may be imposed for operating a vehicle under the influence of [intoxicating liquor] an intoxicant under [section 291-4.] sections 291E-41 and 291E-61. The sign shall be conspicuously positioned in order to be seen by an ordinarily observant person."

SECTION 6. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

"§286-104 What persons shall not be licensed. The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2001, of driving under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or
- (5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months of age may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on

the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129."

SECTION 7. Section 286-132, Hawaii Revised Statutes, is amended to read as follows:

"§286-132 Driving while license suspended or revoked. Except as provided in section [291-4.5,] 291E-62, no resident or nonresident whose driver's license, right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked may drive any motor vehicle upon the highways of this State while the license, right, or privilege remains canceled, suspended, or revoked."

SECTION 8. Section 286G-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) A driver education assessment of \$7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

- (1) Offenses relating to stopping (when prohibited), standing, or parking;
- (2) Offenses relating to registration; and
- (3) Offenses by pedestrians.

In addition, a driver education assessment of \$100 shall be levied on persons convicted under section [291-4] 291E-61 to defray costs of services provided by the driver education and training program; and \$50 shall be levied on persons required to attend a child passenger restraint system safety class under section 291-11.5.

(b) The driver education assessments levied by subsection (a) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the driver education assessment of \$100 levied on a person convicted under section [291-4] 291E-61 may be waived by the court if the court determines that the person is unable to pay the driver education assessment."

SECTION 9. Section 287-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus' record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV[-], as it was in effect on or before December 31, 2001. The traffic violations bureaus may collect a fee, not to exceed \$7, of which \$5 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special fund."

SECTION 10. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding eight new definitions to be appropriately inserted and to read:

- ""Household member" means:
- (1) Persons who reside in the same dwelling unit as the respondent; or
- (2) Persons under twenty-one years of age who are related to the respondent by marriage, blood, or adoption, regardless of whether they reside in the same dwelling unit with the respondent.

"Number plates" refer to the number plates or special number plates, which are commonly known as license plates, that are issued under sections 249-9, 249-9.1,

249-9.2, and 249-9.3 and that are required to be attached on a motor vehicle pursuant to sections 249-1 to 249-13.

“Preliminary alcohol screening device” means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration.

“Privilege” refers to the authority to operate a vessel underway on or in the waters of the State.

“Qualified household member” means a household member of the respondent who has a license that has not expired or been suspended or revoked.

“Repeat intoxicated driver” means a person who previously:

- (1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under:
 - (A) Section 291E-61, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;
- (2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under:
 - (A) Section 291E-61, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or
- (3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest.

“Temporary number plates” refers to the temporary number plates given, along with the temporary vehicle registration, to a respondent pursuant to section 291E-33, but does not include a temporary number plate attached to a new vehicle pursuant to sections 249-7.5 and 286-53.

“Temporary vehicle registration” means the portion of the notice of administrative revocation that, when completed by the arresting law enforcement officer, permits the respondent to drive a vehicle registered in the name of the respondent for thirty days or until the time established by the director under part III.”

2. By amending the definition of “administrative revocation” to read:

““Administrative revocation” means termination of the respondent’s [driver’s vehicle license or];

- (1) License and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III[;]; and
- (2) Registration of any motor vehicle registered to a respondent found to be a repeat intoxicated driver,

but does not include any revocation imposed under section 291E-61.”

3. By amending the definition of “alcohol enforcement contact” to read:

““Alcohol enforcement contact” means: [any]

- (1) Any administrative revocation ordered pursuant to part III; [any]
- (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001; [any]
- (3) Any [driver’s license] suspension or revocation of any license or motor vehicle registration, or both, or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration; [any]
- (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or [a]

- (5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.”
4. By amending the definition of “drug” to read:
 ““Drug” means any controlled substance, as defined and enumerated [øñ] in schedules I through IV of chapter 329, or its metabolites.”
5. By amending the definition of “drug enforcement contact” to read:
 ““Drug enforcement contact” means: [any]
 - (1) Any administrative revocation ordered pursuant to part III; [any]
 - (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001; [any]
 - (3) Any [~~driver’s license~~] suspension or revocation of license or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug [~~concentration~~] content in the person’s blood or urine; [any]
 - (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or [a]
 - (5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs.”
6. By amending the definition of “law enforcement officer” to read:
 ““Law enforcement officer” means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as [defined] specified in section 199-3.”
7. By amending the definition of “public way, street, road, or highway” to read:
 ““Public way, street, road, or highway” includes:
 - (1) The entire width, including [~~beam and~~] berm or shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;
 - (2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;
 - (3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or
 - (4) Any public highway, as defined in section 264-1.”

SECTION 11. Section 291E-11, Hawaii Revised Statutes, is amended to read as follows:

“[E]§291E-11[] Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content. (a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person’s breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person’s breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public

way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol [e~~on~~centration], only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer of the sanctions under part III and section 291E-65.

(c) If there is probable cause to believe that a person is in violation of section 291E-64, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section 291E-61, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291E-61, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products, or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the law enforcement officer has probable cause to believe that the person was operating a vehicle while under the influence of any drug under section 291E-61 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The law enforcement officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) The use of a preliminary alcohol screening device by a law enforcement officer shall not replace a breath, blood, or urine test required under this section. The analysis from the use of a preliminary alcohol screening device shall only be used in determining probable cause for the arrest.

~~[(f)]~~ (g) Any person tested pursuant to this section who is convicted or has the person's license or privilege suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test, or both."

SECTION 12. Section 291E-21, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person ~~[represents]~~ presents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall:

- (1) ~~[Provide the law enforcement officer with the blood or urine sample requested;]~~ Assign a person authorized under section 291E-12 to withdraw the blood sample or to obtain the urine;
- (2) Recover the sample in compliance with section 321-161; and

- (3) ~~[Assign a person authorized under section 291E-12 to withdraw the blood sample or obtain the urine.] Provide the law enforcement officer with the blood or urine sample requested.]~~

SECTION 13. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“[§291E-31] Notice of administrative revocation; effect. As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent's license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
 - (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
 - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
 - (C) Such later date as is established by the director under section 291E-38, if the director administratively revokes the respondent's license~~;~~ and privilege;
- (2) ~~Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);~~
- ~~(2)~~ (3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
- ~~(3)~~ (4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33.”

SECTION 14. Section 291E-33, Hawaii Revised Statutes, is amended to read as follows:

“[§291E-33] Probable cause determination; issuance of notice of administrative revocation; procedures. (a) Whenever a person is arrested for a violation of section 291E-61 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration ~~[of alcohol in the blood]~~, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test or a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test or a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was

unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section ~~[291E-21(b) or (c)]~~ 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(c) Whenever a respondent under this section is a repeat intoxicated driver, the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent's registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part."

SECTION 15. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsections (b) to (h) to read as follows:

"(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration ~~[of the blood]~~ or drug content in the blood or urine and whether the respondent consented to be tested;
- (5) The expiration date of the temporary permit[;], and the temporary motor vehicle registration and temporary number plates if applicable; and
- (6) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked;
- (3) The address or location where the respondent may submit the information;

- (4) That the respondent is not entitled to be present or represented at the administrative review; and
- (5) That the administrative review decision shall be mailed to the respondent:
 - (A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle [is], and motor vehicle registration if applicable, are not administratively revoked after the review, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, unless a subsequent alcohol or drug enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The reasons why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked;
- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
 - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section [291E-38(j);] 291E-38(k), the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;

- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; ~~[and]~~
 - (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for ~~[alcohol counseling, or]~~ an assessment of the respondent's substance abuse [counseling] or dependence and the need for treatment[-or both-]; and
 - (10) That, pursuant to section 291E-B, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent.
- (f) The notice shall provide, at a minimum, the following information relating to administrative hearings:
- (1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;
 - (2) That a request for an administrative hearing and payment of a \$30 fee, unless waived[,], pursuant to section 291E-39, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;
 - (3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;
 - (4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and
 - (5) That a written decision shall be mailed no later than five days after completion of the hearing.
- (g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.
- (h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:
- (1) The effective date of the administrative revocation;
 - (2) The duration of the administrative revocation;
 - (3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;
 - (4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;
 - ~~[(3)]~~ (5) Other conditions that may be imposed by law; and
 - ~~[(4)]~~ (6) The right to obtain judicial review."

SECTION 16. Section 291E-35, Hawaii Revised Statutes, is amended to read as follows:

“[§291E-35] Immediate restoration of license[-] and motor vehicle registration. (a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows

that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice."

SECTION 17. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~291E-36~~] Documents required to be submitted for administrative review; sworn statements [of law enforcement officials]~~]. (a) Whenever a respondent has been arrested for a violation of section 291E-61 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of: ~~[the]~~
 - (i) The sanctions of this part; ~~[that]~~
 - (ii) The possibility that criminal charges may be filed; and ~~[the]~~
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and
 - (D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;

- (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
 - (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
 - (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
 - (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
 - (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
 - (7) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and
 - (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
- (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;

- (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
- (C) The respondent was informed of:
 - (i) The sanctions of this part;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
- (D) The respondent refused to be tested;
- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 18. Section 291E-37, Hawaii Revised Statutes, is amended to read as follows:

"[H]§291E-37[H] **Administrative review; procedures; decision.** (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle, and motor vehicle registration if applicable, or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

- (1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or
- (2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section 291E-33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

- (c) In conducting the administrative review, the director shall consider:
 - (1) Any sworn or unsworn written statement or other written evidence provided by the respondent;
 - (2) The breath, blood, or urine test results, if any; and
 - (3) The sworn statement of any law enforcement [official] officer or other person or other evidence or information required by section 291E-36.

(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or

- (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

~~[(e)]~~ (f) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated.

~~[(f)]~~ (g) If the director administratively revokes the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

- (1) State the reasons for the administrative revocation;
- (2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;
- (3) Explain the procedure by which to request an administrative hearing;
- (4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;
- (5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of ~~[the]~~ law enforcement ~~[officials,]~~ officers or other persons, prior to the hearing; and
- (6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting law enforcement officer.

~~[(g)]~~ (h) Failure of the respondent to request a hearing within the time provided in section 291E-38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section 291E-33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing."

SECTION 19. Section 291E-38, Hawaii Revised Statutes, is amended to read as follows:

“~~[(f)]~~**§291E-38** **Administrative hearing; procedure; decision.** (a) If the director administratively revokes the respondent’s license and privilege to operate a vehicle, ~~and motor vehicle registration if applicable~~, after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

- (1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or
- (2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection ~~[(j)-]~~ (k).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and, after being informed of the sanctions of this part, refused to submit to a breath, blood, or urine test.

(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of any motor vehicle owned by or registered to the respondent only if the director determines that the respondent is a repeat intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the respondent to surrender the number plates and motor vehicle registration of any motor vehicle owned by or registered to the respondent. The director may destroy any number plates taken into custody.

~~[(f)]~~ (g) The respondent’s prior alcohol and drug enforcement contacts shall be entered into evidence.

(g) (h) The sworn statements provided in section 291E-36 shall be admitted into evidence. Upon notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement ~~[official]~~ officer or other person who made a sworn statement, the director shall issue a subpoena for

the [official] officer or other person to appear at the hearing. If the [official] officer or other person cannot appear, the [official] officer or other person at the discretion of the director, may testify by telephone.

[(h)] (i) The hearing shall be recorded in a manner to be determined by the director.

[(i)] (j) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 291E-41.

[(j)] (k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit[-], or temporary motor vehicle registration and temporary number plates, if applicable. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week.

(l) The director may grant a special motor vehicle registration, pursuant to section 291E-B, to a qualified household member or a co-owner of any motor vehicle upon determination that the person is completely dependent on the motor vehicle for the necessities of life. The special motor vehicle registration shall not be valid for use by the respondent.

[(k)] (m) If the respondent fails to appear at the hearing, or if a respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 291E-37."

SECTION 20. Section 291E-39, Hawaii Revised Statutes, is amended to read as follows:

“[§291E-39] **Fees and costs.** The director may assess and collect a \$30 fee from the respondent to cover the costs of processing the respondent's request for an administrative hearing. These costs include but should not be limited to: the cost of photocopying documents; ~~the issuance of subpoenas;~~ conditional license permits, temporary permits, temporary motor vehicle registrations, temporary number plates, and relicensing forms; interpreter services; law enforcement [official] mileage fees; and other similar costs[-]; provided that the costs of issuing subpoenas for witnesses, including mileage fees, shall be borne by the party requesting the subpoena. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee.”

SECTION 21. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

“[E]§291E-41[~~F~~] Effective date and period of administrative revocation; criteria. (a) Unless an administrative revocation is reversed or the temporary permit [is], and temporary motor vehicle registration and temporary number plates if applicable, are extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44, no license and privilege to operate a vehicle, nor motor vehicle registration and number plates if applicable, shall be restored under any circumstances, and no conditional license permit shall be issued during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year[~~;~~] revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years[~~;~~] revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A minimum of two years up to a maximum of four years[~~;~~] revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;
- (4) [For life,] Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection [(e); if applicable,] (d), whichever is longer.

(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.

[(e)] (d) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), (2), [and] (3), and (4) shall be for a period of one year, two years, [and] four years, and a lifetime, respectively.

(e) In addition to subsection (d), any motor vehicle registration of an respondent who is a repeat intoxicated driver and who refused to be tested after being informed of the sanctions of this part shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

~~[(d)]~~ (f) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to ~~[a certified substance abuse counselor]~~ the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director ~~[may]~~ shall so order. All costs for assessment and treatment shall be paid by the respondent.

~~[(e)]~~ (g) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

~~[(f)]~~ (h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 22. Section 291E-42, Hawaii Revised Statutes, is amended to read as follows:

“[H§291E-42] Notice to other states. When a nonresident's driving and boating privileges, and motor vehicle registration if applicable, are administratively revoked under this part, the director shall:

- (1) Notify, in writing, the officials in charge of traffic control, boating control, or public safety in the nonresident's home state, and in any other state in which the nonresident has driving and boating privileges, licenses, or any motor vehicles registered if applicable, of the action taken in this State; and
- (2) Return to the appropriate issuing authority in the other states any license, and any motor vehicle registration and number plates if applicable, seized under section 291E-33.”

SECTION 23. Section 291E-44, Hawaii Revised Statutes, is amended to read as follows:

“[H§291E-44] Conditional license permits. (a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period~~;~~ provided that one or more of the following conditions are met:

- (1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41.

The director shall not issue a conditional license permit to a respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the ~~[arrestee]~~ respondent is requesting a conditional license permit under this section.

- (b) A request made pursuant to subsection (a)(1) shall be accompanied by:
 - (1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if not allowed to drive; and
 - (2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving.
 - (c) A request made pursuant to subsection (a)(2) shall be accompanied by a sworn statement by the respondent attesting to the specific facts upon which the request is based, which statement shall be verified by the director.
 - (d) A conditional license permit may include restrictions allowing the respondent to drive:
 - (1) Only during hours of employment for activities solely within the scope of the employment;
 - (2) Only during daylight hours; or
 - (3) Only for specified purposes or to specified destinations.
- In addition, the director may impose any other appropriate restrictions.
- (e) The duration of the conditional license permit shall be determined on the basis of the criteria set forth in subsections (b) and (c).
 - (f) If the respondent violates the conditions imposed under this section, the conditional license permit shall be rescinded, and administrative revocation shall be immediate for the appropriate period authorized by law."

SECTION 24. Section 291E-45, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~291E-45(~~H~~) Eligibility for relicensing~~(:)~~ and reregistration of motor vehicle. (a) To be eligible for relicensing or renewing the privilege to operate a vessel after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director ~~[or by the court];~~
- (2) Obtain a certified statement from the director indicating eligibility for relicensing~~(:)~~ and for renewing the privilege to operate a vessel;
- (3) Present the certified statement to the appropriate licensing official~~(:)~~ or to the department of land and natural resources, as applicable; and
- (4) Successfully complete each requirement, including payment of all applicable fees, for ~~[obtaining]:~~
 - (A) Obtaining a new license in this State, [including payment of all applicable fees:] pursuant to chapter 286; or
 - (B) Renewing the privilege to operate a vessel, as may be provided in chapter 200 or rules adopted by the department of land and natural resources pursuant to section 200-24.

(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director;
- (2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;
- (3) Present the certified statement to the appropriate county director of finance; and
- (4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees.”

SECTION 25. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):
 - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
 - (B) Either one of the following:
 - (i) Not less than ~~one~~ two hundred forty hours of community service work; or
 - (ii) Not less than ~~[forty-eight consecutive hours]~~ five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,500.
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
 - (A) A fine of not less than \$500 but not more than \$2,500;
 - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
- (4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section 291E-4(a):
 - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
 - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; and
 - (C) Referral to a substance abuse counselor as provided in subsection (d).

An offense under this paragraph is a class C felony.

- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided[, however,] that the total term of imprisonment for a person sentenced under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.
- (c) Notwithstanding any other law to the contrary, any:
 - (1) Conviction under this section or section 291E-4(a); or
 - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be considered a prior conviction for the purposes of imposing sentence under this section. No license and privilege suspension or revocation shall be imposed pursuant to this [subsection] section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this [subsection-] section.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to [a substance abuse counselor who has been certified pursuant to section 321-193] the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All [cost] costs for assessment [or] and treatment [or both] shall be borne by the offender."

SECTION 26. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle [has] have been revoked, suspended, or otherwise restricted pursuant to part III or section 291E-61, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, or 291-7[5] as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; or
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked[; or
- (3) ~~While the person's privilege to operate a vehicle has been revoked].~~"

SECTION 27. Section 291E-63, Hawaii Revised Statutes, is amended to read as follows:

"[§291E-63(3)] Records of [convictions and] suspensions and revocations of operating privileges to be maintained. The court shall notify the department of land and natural resources [shall maintain a record of all persons convicted of offenses or violations involving vessels under this part] of any sanctions imposed for offenses or violations under this part and the period of suspension or revocation of operator privileges ordered by the court under this part."

SECTION 28. Section 291E-64, Hawaii Revised Statutes, is amended by amending subsections (a) to (e) to read as follows:

“(a) It shall be unlawful for any person under the age of twenty-one years to operate any vehicle with a measurable amount of alcohol [concentration]. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been operating a [motor] vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol. [For purposes of this section, “measurable amount of alcohol” means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.]

(b) A person who violates this section shall be sentenced as follows:

(1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:

(A) The court shall impose:

(i) A requirement that the person and, if the person is under the age of eighteen, the person’s parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and

(ii) [One] A one hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and

(B) In addition, the court may impose any one or more of the following:

(i) Not more than thirty-six hours of community service work; or

(ii) A fine of not less than \$150 but not more than \$500.

(2) For a violation that occurs within five years of a prior alcohol enforcement contact:

(A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and

(B) In addition, the court may impose any of the following:

(i) Not more than fifty hours of community service work; or

(ii) A fine of not less than \$300 but not more than \$1,000.

(3) For a violation that occurs within five years of two prior alcohol enforcement contacts:

(A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and

(B) In addition, the court may impose any of the following:

(i) Not more than one hundred hours of community service work; or

(ii) A fine of not less than \$300 but not more than \$1,000.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall require that the person be referred to ~~[a substance abuse counselor who has been certified pursuant to section 321-193]~~ the driver's education program for an assessment, by a certified substance abuse counselor, of the person's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment ~~[or]~~ and treatment ~~[or both]~~ shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(e) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1), who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or ~~[drug-related]~~ drug related enforcement contacts."

SECTION 29. Section 291E-65, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol ~~[e]ncentration~~];
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol ~~[e]ncentration~~];
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
- (4) Whether the person refused to submit to a test of the person's breath or blood."

2. By amending subsection (e) to read:

"(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part III ~~[of this chapter]~~ and shall not be admissible in any other action or proceeding, whether civil or criminal."

SECTION 30. Section 321-161, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of health shall establish and administer a statewide program relating to chemical testing of alcohol concentrations or drug content for the purposes of chapters 286, 291, ~~[and] 291C~~, and 291E, with the consultation of the state director of transportation. Under the program, appropriate procedures shall be established for specifying:

- (1) The qualifications of personnel who administer chemical tests used to determine alcohol concentrations or drug content;
- (2) The procedures for specimen selection, collection, handling, and analysis; and
- (3) The manner of reporting and tabulating the results.”

SECTION 31. Section 431:10C-306, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) No provision of this article shall be construed to exonerate, or in any manner to limit:

- (1) The liability of any person in the business of manufacturing, retailing, repairing, servicing, or otherwise maintaining motor vehicles, arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle in the course of ~~[such] the~~ person’s business;
- (2) The criminal or civil liability, including special and general damages, of any person who, in the maintenance, operation, or use of any motor vehicle:
 - (A) Intentionally causes injury or damage to a person or property;
 - (B) Engages in criminal conduct ~~[which] that~~ causes injury or damage to person or property;
 - (C) Engages in conduct resulting in punitive or exemplary damages; or
 - (D) Causes death or injury to another person in connection with the accident while operating the vehicle in violation of section 291E-61 or section 291-4 or 291-7[.], as those sections were in effect on or before December 31, 2001.”

SECTION 32. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan shall provide all personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this part upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure a personal injury protection and bodily injury and property damage liability policy through the plan:
 - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner’s examination of the motor vehicle insurers’ business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk motor vehicle driver;

- (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving;
 - (ii) Driving while license suspended or revoked;
 - (iii) Leaving the scene of an accident;
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle; [øf]
 - (v) Operating a vehicle under the influence of an intoxicant as provided in section 291E-61; or
 - [(v)] (vi) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug as provided in section 291-7[;], as those sections were in effect on or before December 31, 2001;
- (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity;
- (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes; and
- (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods;
- (2) The plan shall provide personal injury protection benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
 - (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of direct cash payments, or who received public assistance benefits in the form of medical services prior to July 1, 1994, and are still receiving the benefits, through the department of human services, or benefits from the Supplemental Security Income program under the Social Security Administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes; and
 - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver/owner under subparagraphs (A) and (B) may secure motor vehicle insurance coverage through the plan at the individual's option; provided any previous motor vehicle insurance policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid

coverage under any motor vehicle insurance policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of this chapter upon the issuance of a valid motor vehicle insurance identification card pursuant to section 431:10C-107; and

- (3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except the class defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 33. Section 437D-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

"§437D-13 Notice and posting required concerning seat belt, child passenger restraint, and ~~[drunk driving]~~ operating a vehicle under the influence laws. (a) Every lessor shall display at all times in a conspicuous place in each rental motor vehicle offered to the public, a decal, written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii's seat belt and child passenger restraint laws and the prohibition against ~~[driving while]~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, and ~~[driving while]~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant.

The requirements and penalties of Hawaii's seat belt laws and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and penalties for ~~[driving while]~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant, as provided in section ~~[291-4;]~~ 291E-61, shall be printed on a card which shall be placed in the glove compartment of every rental motor vehicle offered to the public."

2. By amending subsection (c) to read:

"(c) The notices and signs required by this section shall include symbolic representations ~~[which]~~ that are of common understanding and clearly recognizable to the public as conveying the required use of seat belts and child passenger restraint systems in the operation of a motor vehicle and the prohibition against ~~[driving while]~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant."

SECTION 34. Section 604-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding

one year whether with or without fine. They shall not have jurisdiction over any offense for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court [~~as aforesaid~~] under this section in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused[,], for [~~such~~] a trial by jury, shall not exercise jurisdiction over [~~such~~] the case [~~except violations under section 291-4~~], but shall examine and discharge or commit for trial the accused as provided by law[, ~~but~~]; provided that, if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the [~~same~~,] case, subject to the right of appeal as provided by law. [~~Trial by jury for violations under section 291-4 may be heard in the district court.~~]"

SECTION 35. Section 706-603, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

"(7) Blood withdrawn pursuant to this section shall be withdrawn only by a person authorized to withdraw blood under section [~~286-152~~,] 291E-12. The results shall be recorded, preserved, and disseminated in a manner consistent with the requirements of chapter 846. A defendant who has already provided the necessary samples of blood pursuant to this section shall be relieved of any further requirement to provide blood for DNA analysis, unless the court orders otherwise."

SECTION 36. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 37. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 38. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 39. This Act shall take effect on January 1, 2002.

(Approved May 25, 2001.)

Notes

1. "89" changed to "189".
2. "297" changed to "296".
3. Edited pursuant to HRS §23G-16.5.

ACT 158

H.B. NO. 1686

A Bill for an Act Relating to the Issuance of Revenue Bonds for Inter-Island Maritime Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that inter-island maritime transportation for passenger service between Oahu, Maui, Lanai, Molokai, and Hawaii is insufficient. The legislature further finds that improvements to the State's harbors are necessary to enable a private ferry service to operate inter-island and intra-island.

Rainbow Island Express, a private entity engaged in maritime operations, has entered into a special facility lease with the department of transportation whereby

the department agreed to construct improvements and equip special facilities used for maritime and marine operations by the entity. The lease contains provisions obligating the entity to pay the department rentals as a means of repaying the revenue bonds.

The legislature finds and declares that the issuance of special facility revenue bonds under this Act is in the public interest.

SECTION 2. Pursuant to section 266-55, Hawaii Revised Statutes, mandating that special facility revenue bonds be issued as revenue bonds under part III of chapter 39, Hawaii Revised Statutes, the department of transportation, with the approval of the governor, is authorized to issue special facility revenue bonds in a total amount not to exceed \$44,478,747, in one or more series for the purpose of making improvements and equipping special facilities for use by Rainbow Island Express under its lease with the department of transportation at harbor facilities on the islands of Molokai, Maui, Lanai, Hawaii, and Oahu to operate an inter-island and intra-island ferry service.

SECTION 3. The special facilities revenue bonds issued under this Act shall be issued pursuant to part III of chapter 39, Hawaii Revised Statutes.

SECTION 4. There is appropriated out of the special facility revenue bond proceeds authorized by this Act the sum of \$44,478,747 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$44,478,747 or so much thereof as may be necessary for fiscal year 2002-2003 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of transportation.

SECTION 5. Any unexpended or unencumbered balance of the appropriation made by this Act as of the close of business on June 30, 2004, shall lapse into the general fund.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 25, 2001.)

ACT 159

S.B. NO. 24

A Bill for an Act Relating to Public Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to enable public agencies to conduct experimental modernization projects this year instead of waiting for the Civil Service Reform Act (Act 253, Session Laws of Hawaii 2000) to take effect in July 2002.

It is the legislative intent that:

- (1) The state or county agency responsible for the implementation or enforcement of state or county personnel laws and rules within their respective jurisdiction shall provide the agency conducting its experimental modernization project with full cooperation in carrying out a project authorized pursuant to this Act; and

- (2) The agency conducting its experimental modernization project shall not be subject to state and county personnel laws and rules in carrying out the purposes of this Act.

SECTION 2. Definitions. As used in this Act, unless the context clearly requires otherwise:

“Appointing authority” means a department head or designee having the power to make appointments or changes in the status of employees.

“Chief executive” means the governor, the respective mayors, the chief justice of the supreme court, and the chief executive officer of the Hawaii health systems corporation. It may include the superintendent of education and the president of the University of Hawaii with respect to their employees on any matter that applies to employees in general, including employees who are not covered by this chapter.

“Director” means the head of the central personnel agency for a jurisdiction regardless of title, whether it is the director of human resources development, director of personnel, director of personnel services, or personnel director.

“Employee” means any person holding a position in the service of a jurisdiction, irrespective of status or type of appointment; provided that if the context clearly applies only to an employee who is a member of the civil service, “employee” means a civil service employee.

“Employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of the employers or acts in their interest in dealing with public employees. In the case of the judiciary, the administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

“Jurisdiction” means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation.

SECTION 3. Experimental modernization projects. (a) It is the intent of this Act to encourage and facilitate improvements in the human resource programs of the several jurisdictions. With the approval of the chief executive, the director may conduct experimental modernization projects to determine whether specific changes in its human resource program would result in a more desirable program for the jurisdiction.

(b) Prior to the implementation of any experimental modernization project, the director shall:

- (1) Develop a plan identifying the purposes of the project, the methodology to be used, the duration of the project, the criteria for evaluation of the project, and the cost of the project, if any;
- (2) Consult with the employees who would be involved in the conduct of the project; and
- (3) Negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement is necessary to conduct the project.

(c) While the project is in progress, it shall not be limited by state or local personnel laws and rules, but shall be in compliance with all equal employment opportunity laws and laws prohibiting discrimination.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved May 25, 2001.)

ACT 160

S.B. NO. 498

A Bill for an Act Making an Appropriation for the Nanakuli Homestead Cemetery.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Native Hawaiian people, like most people in the world, have a deep respect and love for their ancestors and treasure the remains of their ancestors. Hawaiians believe that their ancestors have a special place amongst the living. It is their “mana” that gives strength and power to the living to overcome adversity.

It is customary for Hawaiians, at the start of a meeting or gathering, to begin with a genealogy of their family. Hawaiians talk about their ancestors and the deeds they accomplished in days gone by. Included in those remarks is a brief history and description of the area. This oral repetition ingrains in the present Hawaiian community the history and culture of their “kupuna”. The bond between the living and the dead is strengthened. The old ones have a place in the hearts of the living that does not diminish, but grows.

Nanakuli Hawaiian homestead has a cemetery within its boundaries. The Nanakuli community has taken it upon itself to maintain the site. Unlike commercial cemeteries which have built in funding sources for maintenance and preservation of the grounds, the Nanakuli Hawaiian homestead cemetery does not. With only limited financial support from the department of Hawaiian home lands over the years, the Nanakuli community has done its best to maintain the cemetery.

The deterioration of the cemetery has been a major sore point with the residents of the community. Many residents have come forward to volunteer their services to try to stop the degradation to give the kupuna a proper resting place. However, with limited financial support, the projects were small in scale and did not really stop the deterioration.

Since December 1992, clean up and beautification projects have been ongoing. The Nanakuli Hawaiian homestead community association has solicited community organizations and groups to participate in the monthly clean up and beautification projects. The association has had numerous church organizations; Nanaikapono Protestant Church, Door of Faith Church, Nanakuli Mormon Church, etc.; Nanakuli high school clubs; Ike Loa Kulana club, travel industry club, etc.; and community groups; Boy Scouts of Waianae, and the Nanakuli neighborhood housing service participating in one or more clean up and beautification projects.

Much work still must be done such as clearing and removing rocks, setting and replacement of original grave markers, importing soil, constructing retaining walls, grading and filling driveways, replanting trees and plants, the placement and pouring of sidewalks where needed, and other restoration work as necessary.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$76,020, or so much thereof as may be necessary for fiscal year 2001-2002, for the maintenance and upkeep of the Nanakuli homestead cemetery.

SECTION 3. The sum appropriated shall be expended by the department of Hawaiian home lands for the purposes of this Act.

ACT 161

SECTION 4. The department of Hawaiian home lands shall submit a report to the legislature not later than twenty days prior to the convening of the 2002 regular session on the actions taken and the moneys expended to maintain and upkeep the Nanakuli homestead cemetery.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

ACT 161

S.B. NO. 638

A Bill for an Act Making an Appropriation for the Molokai Irrigation System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Molokai's water shortage has reached a critical stage. The stability of Molokai's agriculture industry is in jeopardy and immediate action needs to be taken. This urgently needed appropriation is necessary to ensure that adequate irrigation water is available for users of the Molokai irrigation system.

The purpose of the Act is to appropriate \$100,000 in general funds in fiscal year 2001-2002 for pumping of water for the Molokai irrigation system until the reservoir water level reaches the forty-foot level, or until the funds are expended.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2001-2002, to pay for pumping of water for the Molokai irrigation system to bring the reservoir water level to the forty-foot level; provided that the department of agriculture shall coordinate the times of withdrawal of water with the commission on water resource management and recognize that the lessees of the Hawaiian homes commission have prior right to two-thirds of the water from the Molokai irrigation system upon showing of actual need therefore pursuant to section 168-4, Hawaii Revised Statutes.

SECTION 3. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

ACT 162

S.B. NO. 805

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

- (1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, prosecuting attorneys, or the attorney general[;]; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation or prosecution; [or]
- (2) Registrants authorized under chapters 448, 453, 460, and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant's own patient[;]; or
- (3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter.

Information disclosed to a registrant or pharmacist under this section shall be transmitted by certified mail or a similar means requiring the registrant's or pharmacist's signature, respectively, for delivery of the information.''

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 25, 2001.)

ACT 163

S.B. NO. 1081

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In response to changing societal needs and educational research, many schools, in recent years, have made significant changes to educational traditions such as the school calendar and other instructional practices. Many educators recognize the value of using out-of-school time to provide supplemental instruction for students. Out-of-school time instructional programs include summer school programs, intersession programs, after-school instructional programs, and other educational programs which are held outside of regular school days or hours. Currently, fee collection is authorized only for summer school and intersession. The legislature finds that changes to the statutes enabling the collection of fees for supplementary, discretionary instructional services to students during times when school is not in session are necessary. In order to authorize the department of education to assess and collect fees for all supplementary instructional services to students during out-of-school time, changes to current statutes are proposed.

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the

contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special [~~summer school and intersession~~] out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649; and
- (27) High technology special fund under section 206M-15.5;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special [~~summer school and intersession~~] out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;

- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees' retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special funds established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649; and
- (24) High technology special fund under section 206M-15.5;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 302A-1310, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-1310] [Summer schools and intersession] Out-of-school time instructional programs; funds, expenditures. All moneys received by and for the public ~~[summer schools and intersession]~~ out-of-school time instructional programs [of year-round schools] from tuition and other fees or from any other source shall be deposited in a special ~~[summer school and intersession]~~ out-of-school time instructional program fund; and except as otherwise provided by the legislature, all expenditures for the operation of public ~~[summer schools and intersession]~~ out-of-school time instructional programs shall be made from this fund.”

SECTION 5. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001, provided that the amendments made to sections 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2003, by section 9 of Act 142, Sessions Laws of Hawaii 1998.

(Approved May 25, 2001.)

Note

1. So in original.

A Bill for an Act Relating to Aquaculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The assessment of the general excise tax at the wholesale or retail rate for aquaculture producers appears to be determined arbitrarily, and is often detrimental to the profitable operation and expansion of aquaculture farms in Hawaii. Many of the items needed in aquaculture production are often subject to the retail general excise tax rates when they should be treated as wholesale items.

The legislature finds that to help level the playing field for local producers with foreign and United States mainland aquaculture producers, the general excise tax law should be clarified to ensure that the wholesale transactions of aquaculture production are taxed at the wholesale rate of one-half of one per cent rate.

The purpose of this Act is to clarify and include the wholesale transactions of aquaculture production in the definition of sales at wholesale.

SECTION 2. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator’s

service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants[;] or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property:
 - (A) To a licensed seller engaged in a service business or calling; provided that:
 - (i) The property is not consumed or incidental to the performance of the services;
 - (ii) There is a resale of the article at the retail rate of four per cent; and
 - (iii) The resale of the article is separately charged or billed by the person rendering the services;
 - (B) Where:
 - (i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
 - (ii) The tangible personal property becomes or is used as an identifiable element of the service rendered; and
 - (iii) The cost of the tangible personal property does not constitute overhead to the licensed seller;the sale shall be subject to section 237-13.3; or
 - (C) Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraphs (A) and (C) shall be repealed on January 1, 2006;
- (9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;
- (10) Sales of services to a licensed seller engaging in a business or calling whenever:

- (A) Either:
 - (i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
 - (ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;
 - (iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or
 - (iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
 - (B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;
 - (C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;
 - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;
 - (E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and
 - (F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.
- Sales subject to this paragraph shall be subject to section 237-13.3;
- (11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;
 - (12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;
 - (13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:
 - (A) Either:
 - (i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a li-

- censed seller for the purpose of rendering another service in the course of the seller's service business or calling;
- (ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or
 - (iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;
- (B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;
 - (C) The cost of the amusement does not constitute overhead to the licensed seller;
 - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;
 - (E) The gross income of the licensed seller is not subject to a deduction under this chapter; and
 - (F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and

- (14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)

Note

1. So in original.

ACT 165

H.B. NO. 186

A Bill for an Act Relating to the Public Land Trust.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2000 legislative session, the legislature passed Act 125, the purpose of which was to facilitate the establishment of a comprehensive information system (system) for inventorying and maintaining information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4, of the State Constitution. In accordance with section 5(a) of Act 125, the auditor is to report to the legislature the system's progress toward completion as well as any legislation the auditor deems necessary to facilitate the

expeditious completion of the system. The auditor has estimated that approximately \$18,500,000 is necessary to complete the system. Although such state funding is not currently available to finance the entire cost, the legislature is committed to funding this undertaking at a level that will ensure meaningful progress towards the completion of the system.

The purpose of this Act is to:

- (1) Extend the lapsing date of funds appropriated in Act 125, Session Laws of Hawaii 2000, to June 30, 2002;
- (2) Appropriate an additional \$100,000 for fiscal year 2001-2002; and
- (3) Provide the office of Hawaiian affairs with the flexibility to match the State's contribution at a level greater than a dollar-for-dollar basis.

SECTION 2. Act 125, Session Laws of Hawaii 2000, is amended by amending section 6 to read as follows:

“SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000[;] or so much thereof as may be necessary for fiscal year 2000-2001 to be expended by the auditor for the purposes of this Act; provided that [no]:

- (1) No funds appropriated shall be expended unless separately matched on a dollar-for-dollar basis and paid to the auditor by the office of Hawaiian affairs[-]; and
- (2) Any unexpended or unencumbered funds at the close of fiscal year 2000-2001 may be expended or encumbered during fiscal year 2001-2002, and shall not lapse until June 30, 2002.

The sum appropriated shall be expended by the auditor for the purposes of this Act.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 to carry out the purposes of Act 125, Session Laws of Hawaii 2000; provided that no funds appropriated shall be expended unless separately matched in an amount not less than a dollar-for-dollar basis and paid to the auditor by the office of Hawaiian affairs.

The sum appropriated shall be expended by the auditor for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2001; provided that section 3 shall take effect on July 1, 2001.

(Approved May 29, 2001.)

ACT 166

H.B. NO. 210

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that agriculture is one of the State's growth industries and is a vital component of the State's economic base. Agriculture provides an economically viable use of the land while providing the open space

valued by residents and visitors alike. Hawaii's agriculture industry has become increasingly diverse with new economic opportunities as prime agriculture land becomes available and quarantine restrictions are overcome. It is encouraging that all sectors of agriculture, including sugar, pineapple, macadamia nut, coffee, papaya, flower, and exotic tropical fruit industries, are working together to accelerate the expansion of the agriculture industry as a whole. To maximize the opportunities for maintaining and expanding the agriculture industry and to take best advantage of the thousands of acres of prime farmland, it is paramount that production-driven research is maintained.

The legislature finds that the commitment of the private sector is critical to the success of any industry and that the Hawaii agriculture research center (HARC) exemplifies such commitment. The legislature also finds that HARC serves as a model of private-public partnerships for agricultural research, and, further, that it effectively partners with public institutions, such as the United States Department of Agriculture-Agricultural Research Service and the University of Hawaii college of tropical agriculture and human resources, in facilitating agricultural technology transfer and in maximizing the use of limited community resources. Most of HARC's funding comes from the private sector, which provides the accountability demanded by its stakeholders and increases the returns on the State's funding, benefiting farm production and the local economy.

HARC has been directing its state-supported research primarily to those industries that provide direct financial support such as coffee, papaya, macadamia nut, sugarcane, and forestry. HARC seeks to help increase commercial production through crop improvement programs focusing on improving cultural practices and producing superior planting material through plant breeding and selection. Agricultural research at HARC will continue to be a key resource in the State's efforts to strengthen and improve the agriculture industry, revitalize the economy, and maintain and create employment opportunities for residents, especially in rural areas.

The purpose of this Act is to provide the necessary funds to promote cost sharing of agricultural research between the public and private sector and to assist in maintaining current minimum levels of agricultural research and development at HARC.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2001-2002 for agricultural research and development to be performed by HARC; provided that no funds shall be made available under this Act for research on:

- (1) Agricultural commodities with annual statewide crop sales of \$20,000,000 or greater, based on the most recent statistics from the department of agriculture, unless the private sector provides a dollar-for-dollar match of funds; and
- (2) Other agricultural commodities unless the private sector provides \$1 for every \$3 appropriated in this Act; provided that up to \$250,000 per year may be released unmatched for agricultural research and development in agricultural commodities other than sugarcane.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

A Bill for an Act Relating to Recycling

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that efforts to improve economic and environmental conditions in the State will depend in part on more efficient and effective uses of its resources. Up through the mid-1990s, Hawaii's used oil disposal system primarily consisted of waste oil being burned at sugar mills for energy recovery. The closure of the Waialua and Kekaha sugar mills has led to the loss of two major burner facilities that accounted for more than nine hundred eighty thousand gallons of used oil per year. Maui Land and Pine Company, which burns more than one million gallons of used oil, serves as the State's major commercial used oil burner. Hawaii currently imports approximately five million gallons of lubricating oil yearly.

As the State evolves away from agriculture, the State continues to lose the primary consumer of recycled used oil fuel, which are the sugar mills. A more usable fuel product needs to be produced to utilize this valuable resource in Hawaii. Growth will also result due to the increased generation of used oil and petroleum waste, and adequate processing capabilities are an important component in the State's future.

It is critical that alternative used oil disposal strategies like producing used oil into a more usable fuel product be pursued and implemented. By being able to reuse this valuable resource, this alternative represents another method to dispose of used oil. An important component to accomplishing used oil recycling would be to build the necessary infrastructure such as a processing plant, which could produce reusable used oil fuel. Such a facility would generate used oil and petroleum waste into recycled used oil fuel.

The legislature finds that the environmental, energy, and economic policies of the State would be substantially improved by the effective utilization of technology to convert used oil and petroleum waste into a more usable fuel product. Financial assistance is essential to stimulate the investment of the capital required to construct a re-refining facility that would provide the State with adequate recycling, reduce the need to ship this valuable resource outside of the State, and lessen Hawaii's dependence on imported petroleum.

Approximately seven hundred fifty thousand gallons of recycled used oil fuel are currently shipped out of State due to the decline of agricultural-based industrial burner facilities. There is the likelihood that the amount of recycled used oil fuel will increase as Hawaii's economy evolves from agriculture to one that is more reflective of today's changing marketplace. The proposed re-refinery will process recycled used oil fuel into No. 2 diesel fuel that can be used for industrial boilers, asphalt plants, and marine fuels. The re-refining process has proven to be successful in Australia, Spain, and Korea.

For the foregoing reasons, the legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is beneficial to public health, safety, and general welfare.

The legislature further finds that part V, chapter 39A, Hawaii Revised Statutes, permits the State to financially assist industrial enterprises through the issuance of special purpose revenue bonds and that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State. The legislature finds that Environmental Recycling Technologies, Inc., a Hawaii-based company, is an industrial enterprise meeting the qualifications for special purpose revenue bond assistance under part V, chapter 39A, Hawaii Revised Statutes. The special purpose revenue bonds autho-

rized under this Act will provide low interest rate bond financing for the construction of a re-refining facility capable of handling two and half million gallons of used oil and other petroleum waste per year for the State of Hawaii.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$2,500,000 for the purpose of assisting Environmental Recycling Technologies, Inc., in the planning, design, construction, and operation of any and all elements of a used oil and other petroleum waste-to-energy facility at Kapolei on the island of Oahu. The legislature finds and determines that the activities and facilities of Environmental Recycling Technologies, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises serving the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2004, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 168

H.B. NO. 513

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

**1. DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES:**

Action Construction, Inc. v. State of Hawaii, et al., Civil No. 98-2564-06, First Circuit	\$ 90,000.00 Settlement
Aloha Flea Market Litigation Civil No. 99-00529SOM/FIY, USDC Civil No. 99-1308-03, First Circuit Civil No. 99-3107-08DDD, First Circuit	\$ 295,000.00 Settlement
Walter Y. Arakaki, General Contractor, Inc. v. Raymond H. Sato, Comptroller, Civil No. 98-5296-12, First Circuit	\$ 55,000.00 Settlement
Gassner v. State of Hawaii Civil No. 98-1314-03, First Circuit	\$ 260,000.00 Settlement
SUBTOTAL:	\$ 700,000.00

**2. DEPARTMENT OF BUDGET AND FI-
NANCE:**

Royal State National Insurance Company, Ltd. v. Board of Trustees, et al., Civil No. 99-0400-01, First Circuit	\$ 22,668.44 Settlement
SUBTOTAL:	\$ 22,668.44

**3. DEPARTMENT OF BUSINESS, ECO-
NOMIC DEVELOPMENT AND TOURISM:**

Heanu v. State of Hawaii Civil No. 9-00167HG, USDC	\$ 51,331.59 Settlement/ Judgment
Amount of Settlement:	\$ 10,000.00
Amount of Judgment:	\$ 40,458.59
6.241% interest from 12/27/00:	\$ 873.00
Nishida v. State of Hawaii Civil No. 98-00145DAE, USDC	\$ 12,170.80 Judgment
Amount of Judgment:	\$ 11,737.80
6.241% interest from 12/29/00:	\$ 433.00
Rowan v. State of Hawaii Civil No. 98-00144ACK, USDC	\$ 18,398.25 Judgment
Amount of Judgment:	\$ 17,573.25
6.241% interest from 10/31/00:	\$ 825.00
Quiocho v. State of Hawaii Civil No. 99-2504-06, First Circuit	\$ 15,798.74 Settlement
SUBTOTAL:	\$ 97,699.38

4. DEPARTMENT OF EDUCATION:

Caires v. Foodland Supermarkets, et al. Civil No. 99-3326-09, First Circuit	\$ 18,500.00 Settlement
Carvalho v. Downey, et al. Civil No. 98-00844, USDC	\$ 35,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Doe Parent v. Heu, et al. Civil No. 00-00740HG, USDC	\$ 15,000.00 Settlement
Ferrera v. Azama, et al. Civil No. 99-0816-02, First Circuit	\$ 539,964.58 Judgment
Amount of Judgment:	\$ 515,891.05
4% interest from 6/13/00:	\$ 24,073.53
Francisco v. State of Hawaii Civil No. 98-0230, Fifth Circuit	\$ 800,000.00 Settlement
James P., et al. v. LeMahieu Civil No. 99-00861DAE, USDC	\$ 15,383.66 Judgment
Amount of Judgment:	\$ 14,632.66
6.241% interest from 10/11/00:	\$ 751.00
Luu v. Cook, et al. Civil No. 98-0018-01, First Circuit	\$ 17,500.00 Settlement
Rohan v. State of Hawaii, et al. Civil No. 00-1-0044(K), Third Circuit	\$ 30,000.00 Settlement
Trinies v. State of Hawaii Civil No. 99-407-11DDD, First Circuit	\$ 15,000.00 Settlement
SUBTOTAL:	<u>\$1,486,348.24</u>
5. DEPARTMENT OF HEALTH:	
Department of Justice Under the False Claims Act for Medicare Overpayment by the Emergency Medical Services Systems Branch of Department of Health	\$ 280,226.52 Settlement
Jones v. State of Hawaii Civil No. 99-00701SOM, USDC	\$ 12,500.00 Settlement
Slavik v. State of Hawaii Civil No. 96-242K, Third Circuit	\$1,536,643.62 Judgment
Amount of Judgment:	\$1,500,000.00
4% interest from 2/6/01:	\$ 28,931.00
Costs:	\$ 7,712.62
SUBTOTAL:	<u>\$1,829,370.14</u>
6. DEPARTMENT OF HUMAN SERVICES:	
Akana v. Chandler, et al. Civil No. 97-00544BMK, USDC	\$ 6,100.00 Settlement
Chang v. Chandler, et al. Civil No. 97-0111 OBMK, USDC	\$ 8,000.00 Settlement
Chong v. Chandler, et al. Civil No. 97-01113BMK, USDC	\$ 1,000.00 Settlement
Esera v. Chandler, et al. Civil No. 97-0539BMK, USDC	\$ 1,016.00 Settlement
Fujioka v. State of Hawaii Civil No. 97-5232-12, First Circuit	\$ 205,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Gonsalves v. Chandler, et al.		\$ 11,772.63
Civil No. 97-00498BMK, USDC		Judgment
Amount of Judgment:	\$ 11,178.63	
6.052% interest from 9/14/00:	\$ 594.00	
Hoelscher v. Chandler, et al.		\$ 17,663.64
Civil No. 97-00504BMK, USDC		Judgment
Amount of Judgment:	\$ 16,741.64	
6.052% interest from 9/14/00:	\$ 892.00	
Kamahele v. Chandler, et al.		\$ 2,800.00
Civil No. 97-01 128BMK, USDC		Settlement
Makin v. State of Hawaii, et al.		\$ 108,500.00
Civil No. 98-00997DAE, USDC		Settlement
Muller v. Chandler, et al.		\$ 2,500.00
Civil No. 97-01 140BMK, USDC		Settlement
Naeole v. D'Enbeau, et al.		\$ 30,118.21
Civil No. 97-0096(1), Second Circuit		Judgment
Naeole v. State of Hawaii, et al.		\$ 75,000.00
Civil No. 97-0096(1), Second Circuit		Settlement
Ota v. Chandler, et al.		\$ 2,000.00
Civil No. 97-02245BMK, USDC		Settlement
Bramble v. Chandler, et al.		\$ 35,000.00
Civil No. 97-00561BMK, USDC		Settlement
Ranit v. Chandler, et al.		\$ 8,641.00
Civil No. 97-01438BMK, USDC		Settlement
Teruya v. Auhll		\$ 4,649.00
Civil No. 94-4034-10, First Circuit		Settlement
Amount of Settlement:	\$ 4,519.00	
4% interest from 11/14/00:	\$ 130.00	
Yee v. Chandler, et al.		\$ 1,000.00
Civil No. 97-01156BMK, USDC		Settlement
Yuen v. State of Hawaii		\$ 13,614.54
S.P. No. 00-1-0004(RWP), First Circuit		Settlement
Amount of Settlement:	\$ 13,290.42	
4% interest from 12/22/00		
to 7/31/01:	\$ 324.12	
SUBTOTAL:		\$ 534,375.02
7. DEPARTMENT OF LABOR AND INDUS-		
TRIAL RELATIONS:		
Tseu v. Jeyte		\$ 30,000.00
Civil No. 94-1553, First Circuit		Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Vinson v. Thomas, et al. Civil No. 97-00091HG, USDC	\$ 48,452.42 Settlement
SUBTOTAL:	\$ 78,452.42
8. DEPARTMENT OF LAND AND NATU- RAL RESOURCES:	
Fielder v. Gehring, et al. Civil No. 99-00350SOM/BMK, USDC	\$ 265,000.00 Settlement
McShane v. State of Hawaii Civil No. 97-2523-06, First Circuit	\$ 25,000.00 Settlement
Napeahi v. Wilson Civil No. 85-01523DAE, USDC	\$ 332,652.69 Judgment
Amount of Judgment:	\$ 314,762.69
6.18% interest from 8/30/00:	\$ 17,890.00
Perreira v. State of Hawaii, et al. Civil No. 98-871, Third Circuit	\$ 30,000.00 Settlement
Pfeiffer, et al. v. State of Hawaii, et al. Civil No. 99-0321-01, First Circuit	\$ 75,000.00 Settlement
SUBTOTAL:	\$ 727,652.69
9. DEPARTMENT OF PUBLIC SAFETY:	
desMarets, In the Matter of desMarets and Waihee, et al. CE-13-181, HLRB	\$ 89,857.14 Judgment
Amount of Judgment:	\$ 84,297.14
4% interest from 12/9/99:	\$ 5,560.00
Dilay v. State of Hawaii Civil No. 99-0053-01, First Circuit	\$ 15,000.00 Settlement
Drane v. Halawa Correctional Facility, et al., Civil No. 98-2093-05, First Circuit	\$ 30,000.00 Settlement
Freeman v. Espinda, et al. Civil No. 98-00244 DAE, USDC	\$ 126,215.47 Settlement
Amount of Settlement:	\$ 122,607.47
Interest:	\$ 3,608.00
Kamai v. State of Hawaii, et al. Civil No. 99-0841-02, First Circuit	\$ 175,000.00 Settlement
McGuire v. State of Hawaii Civil No. 99-3319-09EEH, First Circuit	\$ 40,000.00 Settlement
Nix v. State of Hawaii Civil No. 99-1006-03, First Circuit	\$ 30,000.00 Settlement
Revera v. State of Hawaii, et al. Civil No. 00-1-1289-4, First Circuit	\$ 250,000.00 Settlement
Taylor v. State of Hawaii Civil No. 99-4736-12, First Circuit Civil No. 99-00909DAE/BMK, USDC and MCCP 99-71	\$ 90,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Young v. Public Safety, et al. Civil No. 99-00500HG/LEK, USDC	\$ 15,000.00 Settlement
Zukevich v. State of Hawaii Civil No. 95-00545 ACK, USDC	\$ 294,723.22 Settlement
SUBTOTAL:	\$1,155,795.83

10. UNIVERSITY OF HAWAII:

Emerick v. State of Hawaii, dba Leeward Community College Civil No. 97-00766SPK/KSC, USDC	\$ 177,000.00 Settlement
SUBTOTAL:	\$ 177,000.00

**11. MISCELLANEOUS CLAIMS (Escheated
Warrants):**

Fusayo Ito	\$ 93.10
Remy Luria	\$ 111.00
Tammy G.L. Chun	\$ 111.78
Barbara M. Matsumura	\$ 166.00
Esther Matsushita	\$ 170.00
Greg McCormack	\$ 213.53
Patricia M. Perez	\$ 335.11
SUBTOTAL:	\$ 1,200.52
TOTAL (SECTION 1):	\$6,810,562.68

SECTION 2. The following sums of money are appropriated out of the state highway and harbors funds for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF TRANSPORTATION,
HARBORS DIVISION:**

Healy Tibbitts Builders, Inc. v. State of Hawaii, Civil No. 96-0828-02, First Circuit	\$ 450,000.00 Settlement
Mitchell v. State of Hawaii, et al. Civil No. 99-217K, Third Circuit	\$ 36,481.48 Judgment
Amount of Judgment:	\$ 35,196.42
4% interest from 3/22/01:	\$ 506.00
Costs:	\$ 779.06
TOTAL:	\$ 486,481.48

**DEPARTMENT OF TRANSPORTATION,
HIGHWAYS DIVISION:**

Arakaki v. Anama, et al. Civil No. 98-3469-08, First Circuit	\$ 75,000.00 Settlement
Austria v. State of Hawaii Civil No. 00-1-0757-03, First Circuit	\$ 20,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

Braganza v. State of Hawaii, et al. Civil No. 99-2632-07, First Circuit	\$ 15,000.00 Settlement
Castro v. State of Hawaii Civil No. 90-139, Third Circuit	\$3,563,323.70 Judgment
Cohen v. State of Hawaii Civil No. 00-10060(1), Second Circuit	\$ 72,500.00 Settlement
Corpuz v. State of Hawaii Civil No. 99-0902-03, First Circuit	\$ 40,000.00 Settlement
DeSilva v. State of Hawaii Civil No. 97-0303(3), Second Circuit	\$ 685,974.40 Judgment
Amount of Judgment:	\$638,774.40
4% interest from 9/28/00:	\$ 47,200.00
Fireman's Fund Insurance Companies v. State of Hawaii, Civil No. 99-105, Third Circuit	\$ 25,000.00 Settlement
Hale Kauai v. State of Hawaii Civil No. 97-0028, Fifth Circuit	\$ 15,000.00 Settlement
Julian v. Jacobson, et al. Civil No. 98-5212-12, First Circuit	\$ 75,000.00 Settlement
Kolomitz v. State of Hawaii Civil No. 96-0108(1), Second Circuit	\$ 15,743.66 Judgment
Melvin v. Shephard, et al. Civil No. 97-0-001288(KNB), First Circuit	\$ 60,000.00 Settlement
Pottenger v. State of Hawaii Civil No. 99-103, Third Circuit	\$ 32,500.00 Settlement
Rinaldi, et al. v. Trans-Hawaiian Maui, et al. Civil No. 97-0690(1), Second Circuit	\$ 77,975.30 Judgment
Amount of Judgment:	\$ 63,045.46
4% interest from 10/17/00:	\$ 1,997.00
Costs:	\$ 12,932.84
Roseman v. State of Hawaii Civil No. 98-2192-05, First Circuit	\$ 16,296.50 Settlement
Williams v. State of Hawaii Civil No. 98-0683(3), Second Circuit	\$ 144,118.42 Judgment
Amount of Judgment:	\$134,193.22
4% interest from 7/26/00:	\$ 5,485.76
Costs:	\$ 4,439.44
TOTAL:	\$4,933,431.98
TOTAL (SECTION 2):	\$5,419,913.46
GRAND TOTAL (SECTIONS 1 AND 2):	\$12,230,476.14

SECTION 3. The sums hereinabove appropriated may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon warrants or checks issued by the comptroller of the State:

- (1) Upon vouchers approved by the director of taxation as to claims for refunds of taxes; and

- (2) Upon vouchers approved by the attorney general as to all other claims.

SECTION 4. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

SECTION 5. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 2002, shall lapse into the general fund of the State.

SECTION 6. Any future claim for which money is required to satisfy a judgment or settlement agreement shall be funded through each agency's departmental allocation and not by general fund appropriations.

SECTION 7. If any provision of this Act, or the application thereof to any person or entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

ACT 169

H.B. NO. 538

A Bill for an Act Relating to Coastal Zone Management.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to clarify the language of chapter 205A, Hawaii Revised Statutes, pertaining to a public advisory group because of litigation and to revise the objectives and policies of the chapter to make them consistent with the practical intent and purpose of coastal zone management.

The purpose of this Act is to make clear that it is the lead agency's responsibility to maintain a public advisory body and that the body is advisory to the lead agency and the state coastal zone management program. The Act amends certain objectives and policies to make the former all goal statements and the latter all implementation statements.

The Act increases the range of total and daily penalties which can be assessed for violations of part II or part III of chapter 205A, Hawaii Revised Statutes.

SECTION 2. Section 205A-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
~~““Public advisory body” means the advisory body established in section 205A-3.5;”~~

2. By repealing the definition of “advisory group”.
~~[““Advisory group” means the marine and coastal zone management advisory group established in section 205A-3.5;”]~~

SECTION 3. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Objectives.

- (1) Recreational resources;
 - (A) Provide coastal recreational opportunities accessible to the public.
- (2) Historic resources;
 - (A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
- (3) Scenic and open space resources;
 - (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.
- (4) Coastal ecosystems;
 - (A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.
- (5) Economic uses;
 - (A) Provide public or private facilities and improvements important to the State’s economy in suitable locations.
- (6) Coastal hazards;
 - (A) Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence, and pollution.
- (7) Managing development;
 - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- (8) Public participation;
 - (A) Stimulate public awareness, education, and participation in coastal management.
- (9) Beach protection;
 - (A) Protect beaches for public use and recreation.
- (10) Marine resources;
 - (A) ~~[Implement the State’s ocean resources management plan.]~~
Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

(c) Policies.

- (1) Recreational resources;
 - (A) Improve coordination and funding of coastal recreational planning and management; and
 - (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
 - (ii) Requiring replacement of coastal resources having significant recreational value[,] including, but not limited to, surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
 - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

- (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
 - (v) Ensuring public recreational ~~[use]~~ uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
 - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
 - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
 - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county ~~[planning commissions;]~~ authorities; and crediting such dedication against the requirements of section 46-6.
- (2) Historic resources;
 - (A) Identify and analyze significant archaeological resources;
 - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
 - (C) Support state goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
 - (A) Identify valued scenic resources in the coastal zone management area;
 - (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
 - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
 - (D) Encourage those developments ~~[which]~~ that are not coastal dependent to locate in inland areas.
- (4) Coastal ecosystems;
 - (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
 - ~~[(A)]~~ (B) Improve the technical basis for natural resource management;
 - ~~[(B)]~~ (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
 - ~~[(C)]~~ (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
 - ~~[(D)]~~ (E) Promote water quantity and quality planning and management practices ~~[which]~~ that reflect the tolerance of fresh water and marine ecosystems and ~~[prohibit land and water uses which violate state water quality standards.]~~ maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.
- (5) Economic uses;
 - (A) Concentrate coastal dependent development in appropriate areas;

- (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
- (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Use of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) The development is important to the State's economy.
- (6) Coastal hazards;
 - (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
 - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
 - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
 - (D) Prevent coastal flooding from inland projects[; and
 - (E) ~~Develop a coastal point and nonpoint source pollution control program].~~
- (7) Managing development;
 - (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
 - (B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
 - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their [~~life-eyele~~] life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.
- (8) Public participation;
 - (A) [~~Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program;~~] Promote public involvement in coastal zone management processes;
 - (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with [~~coastal-related~~] coastal issues, developments, and government activities; and
 - (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.
- (9) Beach protection;
 - (A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and [~~to~~] minimize loss of improvements due to erosion;

- (B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
 - (C) Minimize the construction of public erosion-protection structures seaward of the shoreline.
- (10) Marine resources;
- (A) ~~Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;~~
 - (B) ~~Assure~~ Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
 - ~~[(C)]~~ (B) Coordinate the management of marine and coastal resources and activities ~~[management]~~ to improve effectiveness and efficiency;
 - ~~[(D)]~~ (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
 - ~~[(E)]~~ (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
 - ~~[(F)]~~ (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.”

SECTION 4. Section 205A-3, Hawaii Revised Statutes, is amended to read as follows:

“§205A-3 Lead agency. The lead agency shall:

- (1) Receive, disburse, use, expend, and account for all funds that are made available by the United States and the State for the coastal zone management program;
- (2) Provide support and assistance in the administration of the coastal zone management program;
- (3) Review federal programs, federal permits, federal licenses, and federal development proposals for consistency with the coastal zone management program;
- (4) Consult with the counties and the public in preparing guidelines to further specify and clarify the objectives and policies of ~~[the]~~ this chapter to be submitted twenty days prior to the convening of any regular session of the legislature for review, modification, or enactment by the legislature;
- (5) Conduct a continuing review of the administration of the coastal zone management program and of the compliance of state and county agencies with the objectives and policies of this chapter;
- (6) Facilitate public participation in the coastal zone management program~~;~~, including the maintenance of a public advisory body to identify coastal management problems and to provide policy advice and assistance to the lead agency;

- (7) Prepare and periodically update a plan for use of coastal zone management funds to resolve coastal problems and issues that are not adequately addressed by existing laws and rules;
- (8) Advocate agency compliance with chapter 205A;
- (9) Monitor the coastal zone management-related enforcement activities of the state and county agencies responsible for the administration of the objectives and policies of this chapter;
- (10) Prepare an annual report to the governor and the legislature which shall include recommendations for enactment of any legislation necessary to require any agency to comply with the objectives and policies of this chapter and any guidelines enacted by the legislature; and
- (11) Coordinate the implementation of the ocean resources management plan."

SECTION 5. Section 205A-3.5, Hawaii Revised Statutes, is amended to read as follows:

“[§205A-3.5]—Advisory group;] Public advisory body; establishment; composition. (a) There is established within the lead agency [~~a marine and coastal zone management advisory group.~~] a public advisory body that shall provide support to the lead agency as set forth in subsection (f).

(b) ~~The [advisory group] public advisory body shall be composed of [twenty members. Advisory group membership shall include:~~

- (1) ~~The directors of the departments of planning in the counties of Hawaii, Kauai, and Maui and the director of the department of land utilization in the city and county of Honolulu;~~
 - (2) ~~The attorney general, the chairperson of the board of agriculture, the director of business, economic development, and tourism, the adjutant general, the director of health, the chairperson of the board of land and natural resources, the director of public safety, the director of transportation, and the dean of the school of ocean and earth sciences and technology of the University of Hawaii;~~
 - (3) ~~The executive director of the Kahoolawe island reserve commission; and~~
 - (4) ~~Six non-government members, who shall be appointed by the governor for staggered terms of not more than two years.]~~ not more than twelve members who shall be appointed by the director of the lead agency for staggered terms of not more than three years. These members shall be selected with consideration given to the following criteria:
 - ~~[(A)]~~ (1) Statewide geographic distribution; and
 - ~~[(B)]~~ (2) Balanced representation from among [commercial, environmental, native Hawaiian, recreational, and research interests.

~~Prior to the appointment of the non-governmental members, the lead agency shall undertake widespread solicitation of applications from persons who are interested in serving on the advisory group.~~
- ~~(C) The director of the]~~ the following interests: business, environment, practitioners of native Hawaiian culture, terrestrial and marine commerce, recreation, research, and tourism.

The lead agency shall [serve as the chair of the advisory group and shall serve in a voting capacity.] undertake widespread solicitation of applications from persons who are interested in serving on the public advisory body.

(c) The public advisory body shall select its own chair from among its members.

~~(d) [A coordinating committee may be established to assist the advisory group.] The public advisory body may establish working groups as needed. Working group members may include persons who are not members of the public advisory body.~~

~~(e) [Advisory group] Public advisory body and [coordinating committee] working group members shall serve without compensation.~~

~~(f) The [advisory group] public advisory body shall [advise] support the lead agency by providing advice regarding marine and coastal zone management planning, coordination, and facilitation of functions of the coastal zone management program. [The non-government members of the advisory group shall prepare and submit to the legislature, prior to each regular session, a summary of the recommendations appearing in the minutes of the meetings of the advisory group during the prior calendar year and actions resulting from those recommendations.] It shall:~~

~~(1) Evaluate the state coastal zone management program, including activity of the network agencies, and make recommendations for improvements;~~

~~(2) Advocate for the program to the public and the executive and legislative branches of government; and~~

~~(3) Advocate, provide for, and act upon citizen input.~~

~~(g) The [advisory group] public advisory body shall work toward the [establishment and] implementation of an integrated and comprehensive management system for marine and coastal zone resources, consistent with the objectives and policies established in this chapter."~~

SECTION 6. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of "development" to read:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

(1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

(2) Grading, removing, dredging, mining, or extraction of any materials;

(3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;

(4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and

(5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

(1) Construction of a single-family residence that is not part of a larger development;

(2) Repair or maintenance of roads and highways within existing rights-of-way;

(3) Routine maintenance dredging of existing streams, channels, and drainage ways;

(4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

(5) Zoning variances, except for height, density, parking, and shoreline setback;

(6) Repair, maintenance, or interior alterations to existing structures;

(7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

(8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or

- forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
 - (10) Creation or termination of easements, covenants, or other rights in structures or land;
 - (11) Subdivision of land into lots greater than twenty acres in size;
 - (12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - (13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - (14) Structural and nonstructural improvements to existing single-family residences, [~~including additional dwelling units~~²] where otherwise permissible; and
 - (15) Nonstructural improvements to existing commercial structures;
- provided that whenever the authority finds that any excluded use, activity, or operation [~~is or may become part of a larger project the cumulative impact of which~~] may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.”

SECTION 7. Section 205A-30, Hawaii Revised Statutes, is amended to read as follows:

“§205A-30 Emergency and minor permits. Each county authority shall provide specific procedures consistent with this part for the issuance of special management area emergency permits or special management area minor permits, pursuant to the procedural requirements within this part, and judicial review from the grant and denial thereof. The lead agency shall file notice of special management area minor permits in the next available issue of the periodic bulletin of the office of environmental quality control.”

SECTION 8. Section 205A-32, Hawaii Revised Statutes, is amended to read as follows:

“§205A-32 Penalties. (a) Any person who violates any provision of part II or part III shall be liable [fœr] as follows:

- (1) For a civil fine not to exceed [~~\$10,000~~] \$100,000; or
- (2) For the cost of returning the affected environment or ecology within the coastal management area to the condition existing before the violation.

(b) In addition to any other penalties, any person who is violating any provision of part II or part III shall be liable for a civil fine not to exceed [~~\$1,000~~] \$10,000 a day for each day in which such violation persists.

(c) Any civil fine or other penalty provided under this section may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under chapter 91. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Notes

1. So in original.
2. Prior to amendment “,” appeared here.

ACT 170

H.B. NO. 583

A Bill for an Act Relating to the Code of Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding two new sections to part I of article 2 to be appropriately designated and to read as follows:

“§412:2- Emergency applications. Notwithstanding any law to the contrary, an application may be approved by the commissioner without investigation, notice, comment, or hearing in any case in which the commissioner determines to be an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution. No emergency application may be granted unless the commissioner determines that the relevant statutory criteria have been met. Notwithstanding the granting of any approval, if the commissioner discovers good cause why an approval should not have been granted, the approval may be revoked by giving written notice of revocation to the applicant.

§412:2- Commissioner’s power to subpoena. In the course of an investigation of matters affecting the interest of consumers or depositors or of any other matter within the jurisdiction of the division, the commissioner may summon persons and subpoena witnesses, compel their attendance, administer oaths and examine any person under oath, and require the production of books, papers, documents, or objects that the commissioner deems relevant or material to the inquiry. Any summons or subpoena may be served by certified mail with return receipt requested. Powers granted under this section may be enforced by the circuit court.”

SECTION 2. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definition of “financial institution holding company” to read as follows:

““Financial institution holding company” [is] means a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

- (1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
- (2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
- (3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or

- (4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.”

SECTION 3. Section 412:2-306, Hawaii Revised Statutes, is amended to read as follows:

“§412:2-306 Removal or prohibition of institution-affiliated party; grounds. (a) The commissioner may order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of [sueh] the party’s affiliation or participation in the affairs of [sueh] the financial institution if the commissioner determines that all three of the following circumstances exist:

- (1) The institution-affiliated party has violated this chapter or any rules issued pursuant to this chapter, violated a cease and desist order which has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;
- (2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution’s depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of [sueh] the violation, practice, or breach; and
- (3) The violation, practice, or breach involves the institution-affiliated party’s personal dishonesty, or demonstrates [sueh] the party’s wilful or continuing disregard for the safety or soundness of the financial institution.

(b) The commissioner may also order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution if the commissioner determines that:

- (1) The institution-affiliated party has been charged in any information, indictment, or complaint authorized by a United States attorney, state attorney general, or similar legal officer, with the commission of, or participation, in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under state or federal law; and
- (2) The continued service by the institution-affiliated party may pose a threat to the interests of the institution’s depositors or may threaten to impair public confidence in the institution.”

SECTION 4. Section 412:2-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may revoke or suspend any charter or license issued hereunder if the commissioner finds that:

- (1) Any information or representations submitted by an applicant in connection with the issuance of the charter or license were materially false when made;
- (2) Grounds exist for the appointment of a conservator or receiver under this article; [øf]
- (3) The Hawaii financial institution, for a period of six months or more, has ceased to engage in the business for which its charter or license was granted[-]; or

- (4) The Hawaii financial institution has violated or is violating state or federal laws, rules, or regulations, or has committed or is committing an unsafe or unsound practice.”

SECTION 5. Section 412:3-304, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon ~~[approving]~~ the approval of the application [and upon], the payment of an initial license fee established by rule pursuant to chapter 91, and, if applicable, upon providing satisfactory evidence to the commissioner of compliance with the requirements of chapter 415 relating to foreign corporations, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.”

SECTION 6. Section 412:3-617, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Subject to the approval of the commissioner, a solvent credit union whose capital is not impaired and which has not received a notice of charges and proposed order of suspension or revocation pursuant to section 412:2-312 may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section:

- (1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution, recommending the voluntary dissolution of the credit union, and directing that the question of the dissolution be submitted to the commissioner for approval and, if approved, requesting that the liquidation question be submitted to the members. The plan of liquidation and dissolution shall include but not be limited to provisions for the orderly payment or assumption of the credit union’s deposits, shares, and other liabilities;
- (2) Not later than ten days after the meeting of the board of directors described in paragraph (1), the credit union shall file an application with the commissioner pursuant to section 412:3-603, for approval to cease business and dissolve. The application shall be accompanied by a copy of the plan of liquidation and dissolution~~;~~ certified by two executive officers of the credit union~~;~~ and] to have been duly adopted by the board~~;~~ and shall include any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to any government agency or other organization insuring member accounts thereof, in writing, setting forth the reasons for the proposed liquidation;
- (3) The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries, and creditors will be adequately protected under the plan, the credit union is not insolvent or in danger of becoming insolvent, its capital is not impaired and is not in danger of becoming impaired, and no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- (4) Upon receipt of the commissioner’s approval to cease business and dissolve and as soon as the board of directors decides to submit the liquidation question to the members, all business affairs of the credit union, including but not limited to payments on and withdrawals of

shares, share certificates, share drafts, deposits, and deposit certificates, (except for the transfer of shares or deposits to loans and interest), the making of investments of any kind[;] (other than short-term investments), and the issuing of loans, shall be suspended until the members act on the liquidation question. Upon approval by the members, all business transactions of the credit union shall be permanently discontinued. Transfer of deposits or shares to loans and interest, collection of loans and interest, and the payment of necessary expenses of operation shall continue upon authorization by the board of directors or the liquidating agent during liquidation;

- (5) An affirmative majority vote by the members by ballot, in person, by letter, or other written communication, is necessary for a credit union to enter into voluntary liquidation. Whenever authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to [sueh] the meeting;
- (6) Not later than ten days after the members act on the liquidation question, the chairperson of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question;
- (7) A liquidating credit union shall remain in existence for the purpose of discharging its debts, collecting its loans, distributing its assets, and any other necessary functions in order to conclude its business. A liquidating credit union may sue or be sued for the purpose of enforcing its debts and obligations until its affairs are complete;
- (8) The board of directors or the liquidating agent who may be the insurer shall use the assets of the credit union to pay:
 - (A) First, the expenses incidental to liquidation including any surety bonds required during liquidation;
 - (B) Second, any liability due to nonmembers;
 - (C) Third, the deposits and deposit certificates of the members of the credit union; and
 - (D) Fourth, the remaining assets shall be distributed to the members in proportion to the number of shares held by each member on the date dissolution was approved by the members;
- (9) When the board of directors or the liquidating agent determines that all assets of the credit union having a reasonable expectancy of realization have been liquidated and distributed as provided in this section, the board or the liquidating agent, whichever is applicable, shall complete a certificate of dissolution on a form prescribed by the commissioner. Upon the completion of [sueh] the certificate, the board or the liquidating agent, whichever is applicable, shall file [sueh] the certificate with the commissioner for the complete dissolution and liquidation of the credit union; and
- (10) Any credit union whose capital is impaired or in danger of becoming impaired, and any credit union that is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution."

SECTION 7. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [~~To the extent specified herein, a~~] A bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality."

SECTION 8. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [To the extent specified herein, a]~~ A savings bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 9. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [To the extent specified herein, a]~~ A savings and loan association may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 10. Section 412:8-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [To the extent specified herein, a]~~ A trust company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 11. Section 412:9-401, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and [(a)](2) and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges or the [Nasdaq] National Market System of the Nasdaq Stock Market. Not more than twenty-five per cent of the total reserve shall be held in securities listed on the New York or American stock exchanges, or the [Nasdaq] National Market System of the Nasdaq Stock Market.”~~

SECTION 12. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [To the extent specified in this subsection, a]~~ A depository financial services loan company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 13. Section 412:10-502, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [To the extent specified herein, a]~~ A credit union may invest its own assets in bonds, securities, or similar obligations issued by this State[;] or any county of this State, through an appropriate agency or instrumentality.”

SECTION 14. Section 412:13-202, Hawaii Revised Statutes, is amended to read as follows:

“[H]§412:13-202[H] Application to establish and maintain a branch or agency; contents. A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency, shall submit an application to the commissioner, together with the application fee prescribed in section 412:13-206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) [A] If applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted; and
- (3) Any additional information that the commissioner may require.”

SECTION 15. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign bank making an application under this article for a license to establish and maintain a Hawaii state branch or Hawaii state agency shall deliver to the commissioner[:

- (1) ~~Three duplicate originals of the foreign bank’s application, or a greater number as the commissioner may require by rule; and~~
- (2) ~~Three], together with the application, two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of the foreign bank’s organization, or a greater number of copies as the commissioner may require by rule. If the charter, articles of incorporation, or amendments are in a foreign language, [three] two copies (or a greater number of copies as the commissioner may require by rule) of an English translation of the documents under the oath of the translator shall accompany the charter, articles of incorporation, or amendments.”~~

SECTION 16. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the [applicable] requirements of chapter 415 relating to foreign corporations[;], if applicable. The commissioner shall then[:

- (1) ~~Endorse on each document filed as part of the application the word “Filed”, and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;~~
- (2) ~~File in the commissioner’s office one of the originals of the application and copies of the charter or articles of incorporation and amendments thereto; and~~
- (3) ~~Issue] issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.”~~

SECTION 17. Section 412:13-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[Each]~~ An application to establish and maintain a Hawaii representative office shall include, if applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted.”

SECTION 18. Section 412:13-217, Hawaii Revised Statutes, is amended to read as follows:

“**[§412:13-217] Representative office; factors for approval of application.** ~~[(a) A foreign bank making an application for a license to establish and maintain a Hawaii representative office shall deliver to the commissioner three~~

duplicate originals, or a greater number as the commissioner may require by rule, of the foreign bank's application.

~~(b)~~ (a) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii representative office are of good moral character, competent, and sufficiently experienced; and
- (3) The convenience and needs of persons to be served by the proposed Hawaii representative office will be promoted.

[(e)] (b) In considering whether the management of the foreign bank and the proposed management of the Hawaii representative office is of good moral character for the purposes of subsection [(b)], (a), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to, a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
- (5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

[(d)] (c) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the [applicable] requirements of chapter 415[,], relating to foreign corporations[.], if applicable. The commissioner shall then[:

- (1) ~~Endorse on each original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one original so endorsed;~~
- (2) ~~File in the commissioner's office one of the originals of the application; and~~
- (3) ~~Issue]~~ issue a license to establish and maintain a Hawaii representative office to the foreign bank.

[(e)] (d) Each license issued to a foreign bank to establish and maintain a Hawaii representative office shall state fully the name of the foreign bank to which the license is issued, the address or addresses at which the Hawaii representative office is to be located, and any other information as the commissioner may require."

SECTION 19. Section 412:13-222, Hawaii Revised Statutes, is amended to read as follows:

“§412:13-222 Relocation of office; written application necessary. (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office ~~[unless the foreign bank files a written application with the commissioner and the commissioner approves the relocation.]~~ without the commissioner’s prior written approval.

(b) ~~The [written application filed by a]~~ foreign bank ~~[under this section]~~ shall file an application with the commissioner. The application shall be in a form and contain any information as the commissioner shall require and shall be accompanied by a fee, the amount of which shall be established by rule.

(c) If after appropriate examination and investigation, the commissioner is satisfied that the proposed relocation is justified and proper, the commissioner shall approve the application in writing, with any conditions that the commissioner deems appropriate.”

SECTION 20. Section 412:2-605, Hawaii Revised Statutes, is repealed.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 22. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 171

H.B. NO. 676

A Bill for an Act Relating to Occupational and Career Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 373C-1, Hawaii Revised Statutes, is amended to read as follows:

“§373C-1 Findings. The legislature finds that there is a need to coordinate the efforts of a variety of employment-related agencies, programs, and activities, for the purpose of strengthening employment, training, and educational planning and delivery of services. Promoting this coordination can be achieved best through the development of an occupational and career information planning base. ~~[An]~~ A Hawaii occupational information system could meet the common needs of vocational education programs and employment and training programs if it contained data on occupational demand and supply based on uniform definitions, standardized estimating procedures, and common classification codes. ~~[Sueh]~~ This occupational information must be geared to the career decision-making process of youth, as well as to the administrative needs of educational and training planning. The delivery of career information is needed to improve the match of youth career desires with available and anticipated labor demand.”

SECTION 2. Section 373C-2, Hawaii Revised Statutes, is amended to read as follows:

“§373C-2 Purpose. It is the purpose of this chapter to provide for the development and delivery of occupational and career information on a statewide

basis. [Such] This information is to be used for the purpose of employment, training, educational, and career planning with a special view toward improving the relationship of current and projected supply and demand in the Hawaii work force. It is also the purpose of this chapter to provide for the means to develop and deliver occupational and career information through an overall Hawaii occupational information system composed of a career information delivery system and an occupational employment planning system. Additionally, coordination is to be provided for in the development, dissemination, and application of occupational and career information for the purposes of occupational, educational, employment, and training planning and for the delivery and use of career information in educational and occupational decision making by youth, trainees, and job seekers. ~~[Although other agencies may operate programs to implement these purposes and authorities, a coordinating committee will facilitate the integration of occupational information into program planning.]~~”

SECTION 3. Section 373C-21, Hawaii Revised Statutes, is amended to read as follows:

“§373C-21 Purpose. An occupational information data base can provide information for employment, training, and educational program planning, as well as provide input for career planning and job search purposes. The system shall use data collection procedures established by various programs for input and apply standardized estimating procedures for developing current and projected labor market supply and demand data. The system shall deliver the necessary occupationally related information to a widely divergent user population, including planners, students, trainees, and job searchers, in appropriate formats whether manual, internet, or computer-based. The overall occupational information system shall be designed to meet the needs of youth and adult career planners and job seekers as well as the needs of educational, training, and employment program planners for planning data on projected occupational supply and demand.”

SECTION 4. Section 373C-23, Hawaii Revised Statutes, is amended to read as follows:

“§373C-23 Responsibilities. ~~[In consultation with the Hawaii state occupational information coordinating committee and other potential users, the]~~ The department of labor and industrial relations shall be responsible for the preparation of occupational employment demand information concerning projected needs for occupational skills in Hawaii’s labor market. The department of education and University of Hawaii systems shall be responsible for the production of uniform ~~[public and private]~~ educational supply data concerning students in courses related to each occupational category ~~[in consultation with the committee and other potential users]~~.

The [state employment and training council in consultation with the committee and other potential users] workforce development council shall be responsible for coordinating the production of [federal] federally funded training supply data concerning trainees enrolled and completing training programs in each occupational category. The department of human services shall be responsible for preparing information concerning welfare and vocational trainees enrolled and completing training [activities and other rehabilitative data required] by [the] occupational [information system in consultation with the committee and other potential users.] category.

All of the identified entities in this section shall jointly develop and produce, to the extent feasible, other data required of the occupational information system.”

SECTION 5. Section 373C-31, Hawaii Revised Statutes, is amended to read as follows:

“§373C-31 System’s powers and duties. The Hawaii career information delivery system shall be a part of the Hawaii occupational information system. It shall develop and deliver occupational and educational information used for career choice and job search purposes. The information used in the Hawaii career information delivery system shall be obtained primarily from the Hawaii occupational information system and shall be available to all regions and people of the State. Career information shall be delivered to meet ~~[user]~~ customer needs through schools, training sites, employment service offices, and social service offices but shall not be restricted to these ~~[user]~~ customer sites.”

SECTION 6. Section 373C-32, Hawaii Revised Statutes, is amended to read as follows:

“§373C-32 Organization. The delivery of career information on a state-wide basis shall be through the Hawaii career information delivery system program, operated and managed by the department of labor and industrial relations ~~[and managed by the Hawaii state occupational information coordinating committee,]~~ to provide for the maximum input of ~~[user]~~ customer needs and concerns practicable.”

SECTION 7. Section 373C-42, Hawaii Revised Statutes, is amended to read as follows:

“§373C-42 Organization. The development of occupational employment planning information shall be ~~[coordinated by the Hawaii state occupational information coordinating committee and shall be]~~ carried out through the responsibilities defined in section 373C-23.”

SECTION 8. Chapter 373C, part II, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 373C-22, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 172

H.B. NO. 708

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 353C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353C- Federal reimbursement maximization special fund. (a) There is established in the state treasury the federal reimbursement maximization special fund, into which shall be deposited all federal reimbursements received by the department relating to the State Criminal Alien Assistance Program. Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State.

(b) Moneys in the federal reimbursement maximization special fund shall be used by the department to meet the state match requirement for federal grants and costs associated with federal grant reporting requirements, including administrative expenses such as the creation and hiring of temporary staff; and for any other purpose deemed necessary by the department for maintaining existing federal grants as well as pursuing federal grants.

(c) The department shall prepare and submit an annual report on the status of the federal reimbursement maximization special fund to the legislature no later than twenty days before the convening of each regular session. The annual report shall include but not be limited to a description of the use of the funds.”

SECTION 2. There is appropriated out of the federal reimbursement maximization special fund the sum of \$693,832, or so much thereof as may be necessary for fiscal year 2001-2002, to the department of public safety to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of public safety.

SECTION 3. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor need not enforce the strict provisions of this Act, but shall promptly report any such lack of enforcement with reasons therefore to the legislature at its next session thereafter for review by the legislature.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 173

H.B. NO. 1111

A Bill for an Act Relating to Special Purpose Revenue Bonds for an Intergenerational Care Center at Ewa Villages.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to supplement the special purpose revenue bonds previously issued under Act 289, Session Laws of Hawaii 1999, which authorized the issuance of special purpose revenue bonds in a total amount not to exceed \$15,000,000 for the purpose of assisting the EV Community Development Corporation (EVCDC) in financing and refinancing costs related to the acquisition, development, and construction of an intergenerational care center, Kulana Malama.

As a result of community collaboration, EVCDC has made program expansions and facility modifications to respond to the growing needs of medically fragile children and finds that the cost of the development has increased beyond the original bond authorization.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$25,000,000 in one or more series for the purpose of assisting the EVCDC in financing and refinancing costs related to the acquisition, development, and construction of an intergenerational care center, Kulana Malama, that intends to provide health care services to frail elderly and medically fragile infants and children.

The legislature finds and determines that the activities and facilities of the EVCDC at Kulana Malama constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility provided to the general public by a nonprofit corporation.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 174

S.B. NO. 535

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-408, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-408]]~~ **After-school and weekend programs.** The department and the appropriate county agencies may establish and regulate programs of after-school and weekend community-school activities for children, including but not limited to ~~[day-care]~~ child-care programs, arts and crafts, hula, ukulele, and other ~~[educational-or]~~ recreational projects, wherever feasible, at public school and public

park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled, in the furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapters 76 and 77, as may be necessary for carrying out the purposes of this section, and may regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted, while engaged in the performance of duty under this section, shall be deemed a state employee or an employee of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of these persons.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 175

S.B. NO. 597

A Bill for an Act Relating to the State Council on Developmental Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 333E-1, Hawaii Revised Statutes, is amended to read as follows:

“§333E-1 Findings and purpose. The legislature finds that:

- (1) The State of Hawaii has a responsibility to provide support and services for ~~[its developmentally disabled citizens]~~ individuals with developmental disabilities in order to ~~[aid]~~ support them in living ~~[as complete and normal lives as possible.]~~ self-determined lives according to section 333F-8;
- (2) Several departments of the State are responsible for various support and services to ~~[the developmentally disabled, namely the department of health provides health services, the department of education provides educational services, and the department of human services provides vocational rehabilitation and other social services.]~~ individuals with developmental disabilities;
- (3) Lack of coordination among the services and planning activities of the various departments of the State results in gaps in the spectrum of needed services, duplication of services, lack of clarity in responsibility for services, and poorly articulated inter-agency programs, thereby reducing the quality of programs for ~~[the developmentally disabled.]~~ individuals with developmental disabilities;
- (4) Because of specific mandates of the departments, it is essential that a body responsible for coordinating services and planning for ~~[the developmentally disabled]~~ individuals with developmental disabilities be established outside the departments responsible for support and services[-];
- (5) There exists within the state department of health for administrative purposes only, a state ~~[planning]~~ council on developmental disabilities

- appointed by the governor and mandated by federal legislation, supported in large part by federal moneys and required by federal law to provide [coordination and planning in the field of developmental disabilities:] advocacy, capacity building, systemic change, planning, and coordinating activities, promoting interagency collaboration, and enhancing coordination to better serve individuals with developmental disabilities and their families;
- (6) The purpose of this chapter is to establish the state [planning] council on developmental disabilities as the state agency responsible for coordinating services to [the developmentally disabled residents of] individuals with developmental disabilities in Hawaii[-];
- (7) [Deinstitutionalization of the developmentally disabled is a major goal of the State, thus state and county agencies should adopt policies and regulations which will encourage the development of suitable housing for this group within the community.] Community participation is a major goal of the State, thus state and county agencies should adopt policies and regulations which will support individuals and their families to fully participate in their communities; and
- (8) Family support is another major goal of the State in providing families of children with disabilities the support services necessary to support the family; to enable families of children with disabilities to nurture and enjoy their children at home; to enable families of children with disabilities to make informed choices and decisions regarding the nature of support, resources, services, and other assistance made available to the families; and to support family caregivers of adults with disabilities.”

SECTION 2. Section 333E-2, Hawaii Revised Statutes, is amended to read as follows:

“§333E-2 Developmental disabilities, definitions. For the purposes of this chapter, ["developmental disabilities"] the term “developmental disability” means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, [and] economic sufficiency; and
- (5) Reflects the [person’s] individual’s need for a combination and sequence of special, interdisciplinary, or generic [care, treatment, or other services which are of] services, individualized support, or other forms of assistance that are lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described above, if the individual, without services and support, has a high probability of meeting those criteria later in life.”

SECTION 3. Section 333E-3, Hawaii Revised Statutes, is amended to read as follows:

“§333E-3 State [planning] council on developmental disabilities. The state [planning] council on developmental disabilities (hereinafter referred to as the [state council or] the¹ council) shall be placed in the department of health for administrative purposes only and assigned the following responsibilities:

- (1) Planning. The state council shall:
 - (A) Develop, prepare, adopt, and periodically review and revise, as necessary, the state plan for [developmentally disabled] individuals with developmental disabilities (hereinafter called the state plan) in conformance with federal substantive and procedural requirements therefor. The state plan shall guide the development and delivery of all services to individuals with developmental disabilities. The state council shall transmit the state plan to the governor for approval, and upon approval shall be submitted to the federal government for appropriate approval. The state plan and revisions thereto shall be effective upon the governor's approval thereof. The state plan shall include establishment of goals and priorities of the State in meeting the needs of [the developmentally disabled;] individuals with developmental disabilities, including the [establishment] recommendation of priorities for the distribution of public funds for comprehensive services to [the developmentally disabled] individuals with developmental disabilities within the State and other matters deemed necessary to achieve [normalization of lives of the developmentally disabled;] productivity, integration, inclusion, self-determination, and independence of individuals with developmental disabilities. The state plan shall [in addition provide for] guide the coordinated delivery and establishment of comprehensive services, facilities, and programs for [the developmentally disabled;] individuals with developmental disabilities;
 - (B) Review and comment upon implementation plans prepared and carried out by the various departments of the State in carrying out the state plan for [the developmentally disabled;] individuals with developmental disabilities; and
 - (C) Review and comment upon any other state plans which affect services to [the developmentally disabled;] individuals with developmental disabilities;
- (2) Coordination of departments and private agencies. The council shall:
 - (A) Identify services duplicated by departments and private agencies and coordinate and assist in the elimination of unnecessary duplication[-];
 - (B) Encourage efficient and coordinated use of federal, state, and private resources in the provision of services[-];
 - (C) [Designate] Recommend areas of responsibility for services to both public and private agencies serving [developmentally disabled clients;] individuals with developmental disabilities, reviewing [such] designations as necessary. Identify gaps in services to [the developmentally disabled] individuals with developmental disabilities and coordinate responsibilities of various public or private agencies for such missing services[-]; and
 - (D) [Insure] Ensure that implementation planning by the various departments is effectively coordinated and that interdepartmental programs receive the full support of all departments involved[-];
- (3) Evaluation. The council shall:

- (A) Monitor, evaluate, and comment upon implementation plans of the various public and private agencies for ~~[the developmentally disabled.]~~ individuals with developmental disabilities;
 - (B) Monitor all ongoing projects relating to developmental disabilities of the various public and private agencies[-.];
 - (C) ~~[Monitor deinstitutionalization of Waimano training school and hospital and insure that individualized habilitation plans are being implemented for each resident transferred from Waimano.]~~ Participate in the planning, design, or redesign, and monitoring of state quality assurance systems that affect individuals with developmental disabilities;
- (4) Advocacy. The council shall:
- (A) Advocate for the needs of ~~[the developmentally disabled]~~ individuals with developmental disabilities before the legislature and the public and to the governor[-.];
 - (B) Act in an advisory capacity to the governor, the legislature, and all concerned department heads on all issues affecting ~~[the developmentally disabled.]~~ individuals with developmental disabilities; and
 - (C) ~~[Serve as a channel for complaints by consumers of services for the developmentally disabled, following up on such complaints and taking such action as may be warranted.]~~ Support and conduct outreach activities to identify individuals with developmental disabilities and their families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services;
- and²
- (5) Report. The council shall:
- (A) Prepare and submit ~~[annual]~~ reports to the governor, the legislature, and all concerned department heads on the implementation of the state plan[-. The report presented to the legislature shall be submitted ten days prior to the convening of the legislature.];
 - (B) Prepare and submit to the United States Secretary of ~~[Health, Education and Welfare,]~~ Health and Human Services, through the governor, any periodic reports the Secretary may reasonably request[-.]; and
 - (C) Prepare other reports necessary to accomplish its duties under this chapter.
- [(6) Rules. The council shall adopt, amend, and repeal rules under chapter 91, necessary for the implementation of this chapter.]”

SECTION 4. Section 333E-4, Hawaii Revised Statutes, is amended to read as follows:

“§333E-4 Membership on the state council. The state council shall consist of ~~[twenty-five]~~ voting members~~[-, appointed by the governor]~~ as described in federal law, for staggered terms ~~[in the manner prescribed by section 26-34]~~. The members of the council shall be residents of the State. The council shall at all times include in its membership six representatives from the neighbor islands with a minimum of one representative from Hawaii, Kauai, and Maui county and representatives of the following, unless these programs are no longer in existence in the State: [principal state agencies, higher education training facilities, each university affiliated facility or satellite center in the State,] state entities that administer funds provided under

federal law relating to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.), university centers for excellence in developmental disabilities education, research, and service, and the state protection and advocacy system, and local [agencies or] and nongovernmental agencies [or], and private nonprofit groups concerned with services [to persons] for individuals with developmental disabilities in this State.

- (1) [At least one-half] Not less than sixty per cent of the membership of the council shall consist of [consumers] individuals who are:
 - (A) [Persons] Individuals with developmental disabilities or their parents[-]; or
 - (B) Immediate relatives or guardians of such persons, and who are not employees of a state agency which receives funds or provides services under the state council, or managing employees, or persons with an ownership or controlling interest of any other entity which receives funds or provides services under the state council[-];
- (2) Of the members of the council described in paragraph (1):
 - (A) At least one-third shall be [persons] individuals with developmental disabilities[-]; and
 - (B) At least one-third shall be immediate relatives or guardians of such person, of which at least one shall be an immediate relative or guardian of an institutionalized [person] individual with developmental disabilities[-];
- and
- (3) The members of the state council shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this chapter.”

SECTION 5. Section 333E-5, Hawaii Revised Statutes, is amended to read as follows:

“§333E-5 Officers, committees, staff. The state council shall, by majority vote of the voting members, elect its own chairperson from among the appointed members, and shall establish such committees as it deems necessary or desirable. The state council may appoint an executive [secretary] administrator subject to chapters 76 and 77 who may appoint persons to such staff positions subject to chapters 76 and 77 as the council may authorize within available funds. The affirmative votes of a majority of the members of the council shall be necessary for the appointment or removal of the executive [secretary-] administrator.”

SECTION 6. Section 333F-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system of supports and services for persons with developmental disabilities or mental retardation within the limits of state or federal resources allocated or available for the purposes of this chapter. The department shall administer or may provide available supports and services based on a client-centered plan, which resulted from client choices and decision-making that allowed and respected client self-determination.

The department’s responsibility for persons with developmental disabilities or mental retardation shall be under one administrative unit for the purpose of coordination, monitoring, evaluation, and delivery of services. Not later than June

30, 1999, all programs and services falling under this chapter shall be provided in the community, including services presently provided at Waimano training school and hospital. When the private sector does not provide or is not able to provide the services, the department shall provide the services. Clients at Waimano training school and hospital shall be placed into community-based programs provided appropriate support services are available.

The department shall convene a panel not later than August 1, 1995, to create a plan to provide services in the community and to ensure that the transition of Waimano training school and hospital residents to the community will be client-centered, taking into consideration the health, safety, and happiness of the residents and the concerns of their families. The panel shall consist of but not be limited to consumers, families, representatives from the private sector, employees and employee representatives, professionals, representatives of the University of Hawaii affiliate program, and representatives of the state [planning] council on developmental disabilities.”

SECTION 7. Section 333F-18, Hawaii Revised Statutes, is amended to read as follows:

“[E]§333F-18[.] **Rules.** The director, in consultation with the state [planning] council on developmental disabilities, private agencies, users of services under this chapter, and other interested parties, shall adopt rules pursuant to chapter 91 necessary or appropriate to carry out this chapter, which shall include[.] but not be limited to:

- (1) Establishment of eligibility requirements for participation in services provided under this chapter;
- (2) Establishment of standards of transfer from one facility to another;
- (3) Provision for the involvement of the person and, where appropriate, the parents, guardian, or other representatives of the person in the determination of eligibility under this chapter, the preparation of the person’s individualized service plan, and the selection or rejection of services under this chapter;
- (4) Protection and enhancement of the rights of persons receiving or applying for services under this chapter, including the right to privacy and confidentiality;
- (5) A fair, timely, and impartial grievance procedure to provide administrative due process and recourse for persons aggrieved by any action or failure to act on the part of the department under this chapter; and
- (6) Other provisions required or appropriate to implement the purposes of this chapter.”

SECTION 8. Section 348-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The council shall coordinate with other councils within the State including the statewide independent living council, the state [planning] council on developmental disabilities, the state council on mental health, the advisory panel of individuals with disabilities in education, and the state workforce development council. The council shall establish working relationships between the vocational rehabilitation division of the department and other councils and coordinate other functions as deemed appropriate under federal law.”

SECTION 9. Section 560:5-610, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the reproductive rights protection committee within the department of health for administrative purposes. The committee shall consist of not fewer than five nor more than seven persons appointed, with the consent of the senate, by the governor for staggered terms as provided in section 26-34. The state [planning] council on developmental disabilities shall provide the governor with a list of nominees. The governor shall not be limited to the nominees provided in appointing the members of the committee. The committee shall include a person with a disability or the parent or guardian of such a person and persons from at least the following disciplines:

- (1) Law;
- (2) Medicine;
- (3) Theological or philosophical ethics;
- (4) Social work; and
- (5) Psychology or psychiatry.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Notes

1. “The” should be bracketed.
2. “And” should be underscored.

ACT 176

S.B. NO. 704

A Bill for an Act Relating to Crime Victim Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 351-69, Hawaii Revised Statutes, is amended to read as follows:

“**§351-69 Commission staff.** Supervisory, administrative, and clerical personnel necessary for the efficient functioning of the commission shall be appointed as provided in section 26-35. An executive director and an administrative assistant shall be appointed, without regard to chapters 76 and 77, for the proper administration and enforcement of this chapter.”

SECTION 2. Act 278, Session Laws of Hawaii 1999, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval; provided that Section 4 shall take effect on July 1, 1999[, and shall be repealed on July 1, 2001].”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$450,000, or so much thereof as may be necessary, for fiscal year 2001-2002 to be deposited into the crime victim compensation special fund.

SECTION 4. There is appropriated out of the crime victim compensation special fund the sum of \$450,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the sole purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes, by payments authorized by the crime victim compensation commission.

SECTION 5. The sums appropriated in sections 3 and 4 of this Act shall be expended by the department of public safety for the purposes of this Act.

SECTION 6. The crime victim compensation commission shall submit a report to the legislature at least twenty days prior to the convening of the regular session of 2002 that shall include but not be limited to the following:

- (1) The maximum amount of fees that could have been collected by the courts during fiscal year 2000-2001 in accordance with section 351-62.5, Hawaii Revised Statutes;
- (2) The total amount deposited by the courts for fiscal year 2000-2001 in accordance with section 351-62.5, Hawaii Revised Statutes; and
- (3) An analysis of any discrepancies between the amounts determined in paragraphs (1) and (2), including recommendations of maximizing the amount of fees deposited into the fund.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2001, except that section 2 shall take effect on June 30, 2001.

(Approved May 29, 2001.)

ACT 177

S.B. NO. 986

A Bill for an Act Relating to Aquaculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183D-1, Hawaii Revised Statutes, is amended by amending the definition of "aquaculture" to read as follows:

““Aquaculture” means the ~~[farming or ranching of aquatic life in a controlled salt, brackish, or freshwater environment; provided that the farm or ranch is on or directly adjacent to land.]~~ propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research purposes, commercial purposes, or stocking purposes.”

SECTION 2. Section 187A-1, Hawaii Revised Statutes, is amended by amending the definition of "aquaculture" to read as follows:

““Aquaculture” means the ~~[farming or ranching of aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.]~~ propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research purposes, commercial purposes, or stocking purposes.”

SECTION 3. Section 219-2, Hawaii Revised Statutes, is amended by amending the definition of "aquaculture" to read as follows:

““Aquaculture” means the ~~[production of aquatic plants and animal life in a controlled salt, brackish, or freshwater environment within the real property for which real property taxes are assessed and paid by the owner or producer.]~~ propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for commercial purposes or authorized stock enhancement purposes.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 178

S.B. NO. 1011

A Bill for an Act Relating to Geographic Information Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish a special fund to help support the operation and maintenance of the statewide planning and geographic information system and to enable the office of planning to charge fees for spatial analysis services and geographic information system products.

SECTION 2. Chapter 225M, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§225M- Statewide planning and geographic information system special fund. (a) There is established in the state treasury the statewide planning and geographic information system special fund, into which shall be deposited:

- (1) Moneys collected as fees for geographic information system services rendered and end products such as maps;
- (2) Moneys directed, allocated, or disbursed to the statewide planning and geographic information system program from other government agencies or private sources to help support the acquisition of hardware, software, and databases;
- (3) Moneys collected as fees for the convenience of obtaining geographic information system services and products via the Internet; and
- (4) Moneys directed, allocated, or disbursed to the statewide planning and geographic information system program from non-state sources, including grants, awards, and donations.

(b) The statewide planning and geographic information system special fund shall be used to help defray the costs of the following:

- (1) Planning and geographic information system program activities, including the provision of state funds to match federal funds from the United States Geological Survey or other federal agencies; and
- (2) Operating costs of the geographic information system program, including compensation of staff and acquisition and maintenance of hardware or software necessary to implement section 225M-2(b)(4)(B).

(c) Investment earnings credited to the assets of the fund shall become a part of the assets of the fund.

§225M- Fees for statewide geographic information system services. The office of planning may charge fees for statewide geographic information system services and products. All fees collected for geographic information system analyses and other related services shall be deposited into the statewide planning and geographic information system special fund for the sole purpose of supporting the statewide planning and geographic information system. The office shall adopt rules setting fees for geographic information system services and products.”

SECTION 3. There is appropriated out of the statewide planning and geographic information system special fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for the purposes of the statewide planning and geographic information system.

The sum appropriated shall be expended by the office of planning.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 179

S.B. NO. 1013

A Bill for an Act Relating to the Hawaii Community Development Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to increase the Hawaii community development authority's tax-exempt public facilities revenue bond authorization to a total authorization of \$150,000,000 for the provision of public facilities such as parking structures and other community facilities.

SECTION 2. Act 268, Session Laws of Hawaii 1985, as amended by Act 228, Session Laws of Hawaii 1987, is amended by amending section 2 to read as follows:

“SECTION 2. **Issuance of revenue bond; amount authorized.** Revenue bonds may be issued by the authority pursuant to part III, chapter 39, Hawaii Revised Statutes, and part IV, chapter 206E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [~~\$35,000,000,~~] \$150,000,000, at such times and in such amounts as it deems advisable for the purpose of undertaking, operating, and maintaining public facilities provided under chapter 206E, Hawaii Revised Statutes.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

ACT 180

S.B. NO. 1030

A Bill for an Act Relating to the Hawaii Community Development Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the development of Kakaako, which could include but not be limited to an ocean science center, aquarium, multicultural center, and ocean park, constitutes a valid public purpose.

Our history, our culture, and our people are integrally tied to the sea. It also shapes our future by dictating our opportunities for economic development. Hawaii is world renowned for its accomplishments in ocean science and would reap significant benefits from an exceptional ocean science facility. The Waikiki Aquarium, which is designated as the state aquarium, has limited land available for expansion at its current location, but would be incorporated into a new, world-class ocean science center in Kakaako. The ocean science center could serve as an important research facility and could include existing marine science facilities in the Kewalo Basin area. The ocean science center will expand research and development opportunities, as well as be a center for discovery, learning, and enrichment for Hawaii's people. In addition, it would add an essential new attraction for visitors to the State and provide a catalyst for commercial and retail development on adjacent state-owned land at Kewalo Basin.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SPECIAL FACILITY PROJECTS

§206E- Definitions. For the purpose of this part, if not inconsistent with the context:

“Special facility” means one or more buildings or structures and the land thereof for the construction of facilities that provides benefits to the community at large including, without limitation, an ocean science center that incorporates research and education programs and which is the subject of a special facility lease.

“Special facility lease” includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the same special facility.

§206E- Powers. In addition and supplemental to the powers granted to the authority by law, the authority may:

- (1) With the approval of the governor, and without regard to chapter 103D, enter into a special facility lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield all or a portion of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and

- (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. Neither the undertaking by the other person nor the acceptance by the authority of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.

§206E- Findings and determination for special facility leases. The authority shall not enter into any special facility lease unless the authority at or prior to the entering into of such special facility lease shall find and determine that the entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the authority then outstanding.

§206E- Special facility lease. (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the authority shall at least contain provisions obligating the other person to the special facility lease:

- (1) To pay to the authority during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at the time or times and in the amount or amounts that will be sufficient:
 - (A) To pay the principal and interest on all special facility revenue bonds issued for the special facility;
 - (B) To establish or maintain any reserves for these payments; and
 - (C) To pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;
- (2) To pay to the authority:
 - (A) A ground rental, as determined by the authority, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or
 - (B) A properly allocable share of the administrative costs of the authority in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds;
- (3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the authority all costs of operation, maintenance, and repair of the special facility;
- (4) To:
 - (A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;
 - (B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the authority and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility

or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility;

- (C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and
- (D) Provide insurance for workers' compensation and employer's liability for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law);

provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the authority, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other person; and provided further that the insurance shall name the authority, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

- (5) To indemnify, save, and hold the authority, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:
 - (A) Condition of the special facility;
 - (B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease;
 - (C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or
 - (D) Accident to, or injury or death of, any person or loss of, or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person.

Any moneys received by the authority pursuant to paragraphs (2) and (3) shall be paid into the Hawaii community development revolving fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of the special facility lease, as estimated by the authority at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the authority shall contain any other terms and conditions that the authority deems advisable to effectuate the purposes of this part.

§206E- Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to part III of chapter 39, except as follows:

- (1) No revenue bonds shall be issued unless at the time of issuance the authority shall have entered into a special facility lease with respect to the special facility for which the revenue bonds are to be issued;
- (2) The revenue bonds shall be issued in the name of the authority, and not in the name of the State;
- (3) The revenue bonds shall be payable solely from and secured solely by the revenues derived by the authority from the special facility for which they are issued;
- (4) The final maturity date of the revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease;
- (5) If deemed necessary or advisable by the authority, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the authority, with the approval of the director of finance, may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with the trustee. The trustee may be authorized by the authority to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply the revenues to the payment of the principal and interest on the revenue bonds. If any trustee shall be appointed, any trust indenture or agreement entered into by the authority with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or agreement". The covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust agreement or indenture. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the authority pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The authority may pledge and assign to the trustee the special facility lease and the rights of the authority including the revenues thereunder;
- (6) If the authority, with the approval of the director of finance, shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of the second sentence of section 39-68, the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the revenue bonds, or may elect to limit the functions the director of finance shall perform as the fiscal agent. The authority, with the approval of the director of finance, may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to payment, purchase, registration, transfer, exchange, and redemption, that the authority may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons which have been paid and the supervision and conduction of the destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or construed as a limitation upon the powers granted in the preceding paragraph to the authority, with the approval of the director of finance, to appoint the trustee, or granted in sections 36-3 and 39-13 and the

third sentence of section 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in that paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director of finance shall perform as the fiscal agent, that the director of finance may deem necessary, advisable, or expedient;

- (7) The authority may sell the revenue bonds either at public or private sale;
- (8) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued, the revenues shall be held in a separate account in the treasury of the State, separate and apart from the Hawaii community development revolving fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing the revenue bonds;
- (9) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of the revenue bonds, signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures;
- (10) Proceeds of the revenue bonds may be used and applied by the authority to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs; and
- (11) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of the lease, at the other person's expense, the requirement shall constitute compliance by the authority with section 39-61(a)(2), and none of the revenues derived by the authority from the special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not be¹ apply to the revenues derived from a special facility lease.

§206E- Special facility revenue bonds; special funds. (a) A separate special fund shall be established for each special facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "special facility revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 206E-16, all revenues, income, and receipts derived from the special facility for which the revenue bonds are issued shall be paid into the special facility revenue bond fund established for that special facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds."

SECTION 3. Pursuant to part , chapter 206E, Hawaii Revised Statutes, the Hawaii community development authority, with the approval of the governor, may issue in one or more series special facility revenue bonds in a total amount not to exceed \$20,000,000 for the fiscal biennium 2001-2003 for the purpose of constructing, furnishing, and equipping an ocean science center in Kakaako. The

legislature finds and determines that the ocean science center in Kakaako constitutes a special facility as defined in section 2 of this Act.

SECTION 4. The Hawaii community development authority may make grants for projects in the Kakaako community development district.

Chapter 42F, Hawaii Revised Statutes, shall not apply to any grants made to the ocean science center, but all such grants shall only be made in accordance with the following standards and conditions:

- (1) Requests for grants shall be submitted to the executive director of the Hawaii community development authority. Each request shall state:
 - (A) The name of the requesting organization;
 - (B) The public purpose for the grant;
 - (C) The services to be supported by the grant;
 - (D) The target group; and
 - (E) The cost of the grant and the budget.
- (2) Grants shall only be awarded to organizations which:
 - (A) Are licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which a grant is awarded;
 - (B) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
 - (C) Agree not to use state funds for entertainment or lobbying activities;
 - (D) Allow the Hawaii community development authority, legislative committees and their staff, and the auditor full access to their records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant; and
 - (E) Comply with other requirements as the Hawaii community development authority may prescribe.
- (3) In addition, a grant may be made to an organization only if the organization:
 - (A) Is incorporated under the laws of the State; and
 - (B) Has bylaws or policies that describe the manner in which the activities or services for which a grant is awarded shall be conducted or provided.
- (4) Further, a grant may be awarded to a nonprofit organization only if the organization:
 - (A) Has been determined and designated to be a nonprofit organization by the Internal Revenue Service; and
 - (B) Has a governing board whose members have no material conflict of interest and serve without compensation.

SECTION 5. The Hawaii community development authority may from time to time issue refunding special facility revenue bonds authorized in such principal amounts as the executive director shall determine to be necessary to refund the special facility revenue bonds authorized in section 3 of this Act.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

Note

1. So in original.

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 1:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$3,718,933	\$9,085,700
Special Funds	1,901,552	4,647,525
Federal Funds	258,969	631,880
Other Funds	72,407	176,746

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 1:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$59,171	\$144,872
Special Funds	-0-	-0-
Federal Funds	-0-	-0-

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$16,187	\$39,099
Special Funds	5,990	14,368
Federal Funds	1,175	2,746
Other Funds	-0-	-0-

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There is appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$780,912	\$1,295,074
Special Funds	-0-	-0-
Federal Funds	-0-	-0-

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund collective bargaining cost items in the agreement negotiated for state employees in collective bargaining unit 1 assigned to the Hawaii health systems corporation:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$509,989	\$1,253,023

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation in each respective fiscal year for the purposes of this part.

PART VI

SECTION 11. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 12. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2002, and June 30, 2003, of the respective fiscal years, shall lapse as of those dates.

SECTION 13. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the arbitration award for collective bargaining unit 10:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$2,515,230	\$6,352,592
Special Funds	920,858	2,280,943
Federal Funds	51,879	127,587
Other Funds	32,186	84,875

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the arbitration award for collective bargaining unit 10:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$68,225	\$174,182

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$53,051	\$134,636
Special Funds	6,552	17,393
Federal Funds	2,578	6,815

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There is appropriated or authorized from the source of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary to fund for fiscal biennium 2001-2003 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$1,785	\$4,712

SECTION 8. The sums appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund collective bargaining cost items in the agreement negotiated for state employees in collective bargaining unit 10 assigned to the Hawaii health systems corporation:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$927,410	\$2,298,336

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation in each respective fiscal year for the purposes of this part.

PART VI

SECTION 11. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 12. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2002, and June 30, 2003, of the respective fiscal years, shall lapse as of those dates.

SECTION 13. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 11:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Special Funds	\$896,486	\$797,817

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2001-2003, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Special Funds	\$52,922	\$51,349

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2002, and June 30, 2003, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

ACT 184

S.B. NO. 1060

A Bill for an Act Relating to Escrow Depositories.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 449, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

§449- Confidential portion of application or records. Information contained in any application or record shall be made available to the public unless that information may be withheld from public disclosure by the commissioner under chapter 92F.

§449- Closing branch office. (a) An escrow depository shall give the commissioner notice of its intent to close any branch office at least thirty days prior to the closing. The notice shall:

- (1) State the intended date of closing;
- (2) Specify the reasons for the closing; and
- (3) Contain a certification by the secretary or other authorized officer of the escrow depository that the decision to close was duly approved by its board of directors.

(b) After closing a branch office, the escrow depository shall promptly thereafter surrender to the commissioner the branch office license for that location.

§449- Termination of escrow depository operations. (a) A solvent escrow depository whose capital is not impaired and that has not received a notice of charges and proposed suspension or revocation order pursuant to section 449-17 may cease its business and surrender its license in the following manner:

- (1) The board of directors shall adopt a resolution approving a plan to cease activity for which a license to operate as an escrow depository is required. If applicable, the plan shall include provisions for the sale, exchange, or disposition of all outstanding escrow accounts or other business for which an escrow depository license is required by this chapter;
- (2) The escrow depository shall:
 - (A) Notify in writing all buyers and sellers whose accounts still contain outstanding balances of the termination of the escrow depository's operations and the specific arrangements to handle the particular transaction; and
 - (B) Provide information concerning a contact person for the purpose of answering questions and providing documents on closed accounts. This individual or the successor thereof shall continue to perform this task until the applicable statutes of limitations have lapsed;
- (3) The escrow depository shall file an application with the commissioner in the prescribed form for approval to cease activity for which a license to operate as an escrow depository is required. The application shall be accompanied by:
 - (A) A copy of the plan to cease activity for which a license to operate as an escrow depository is required, certified by two executive officers of the escrow depository as having been duly adopted by the board;

- (B) Any application that may be required pursuant to section 449-8.6, if applicable;
- (C) A copy of the notice sent by the escrow depository to all buyers and sellers whose accounts still contain outstanding balances, and a copy of the notice providing information concerning a contact person for the purpose of answering questions and providing documents on closed accounts; and
- (D) Any other information that the commissioner may require;
- (4) The commissioner may require that an audit report, prepared by a certified public accountant at the expense of the escrow depository, be submitted showing the final accounting of the company's operations, should circumstances so warrant;
- (5) The commissioner shall approve the application to cease activity for which a license to operate as an escrow depository is required if:
 - (A) The commissioner is satisfied with the plan;
 - (B) The conditions for approval contained in section 449-8.6 have been met, if applicable; and
 - (C) No other reason exists to deny the application; provided that the commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- and
- (6) Upon receipt of the commissioner's approval, an escrow depository that has filed:
 - (A) A plan attesting that the company does not retain any outstanding escrow accounts or other business for which an escrow depository license is required by this chapter, shall forthwith surrender to the commissioner all of its escrow depository licenses; or
 - (B) A plan that includes provisions for the sale, exchange, or disposition of outstanding escrow accounts or other business, upon receipt of the commissioner's approval, shall proceed with its plan to cease activity for which a license to operate as an escrow depository is required. Upon completion of its plan, the escrow depository shall file a written notification with the commissioner, signed by its president and secretary, certifying that there are no outstanding escrow liabilities. Filing of the written notification shall be accompanied by the surrender of all escrow depository licenses.

(b) Nothing in this section shall preclude the commissioner at any time from seeking any relief or sanction from the courts that may otherwise be permitted by law."

SECTION 2. Section 449-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Division” means the division of financial institutions of the department of commerce and consumer affairs.”

SECTION 3. Section 449-11, Hawaii Revised Statutes, is amended to read as follows:

“§449-11 Fidelity bonds; deposit. A licensed escrow depository shall at all times either:

- (1) Maintain a fidelity bond executed by a surety insurer authorized to do business in the State in an amount not less than \$25,000; provided that[;] any bond which is subject to a deductible thereunder[;] in excess

of \$5,000 per occurrence[;] shall require the prior approval of the commissioner, who may take into consideration, among other factors, the amount of the proposed bond; or

- (2) Deposit an equivalent amount of cash or securities under such terms and conditions as are acceptable to the commissioner,

upon all of its directors, officers, and employees who have access to money or negotiable securities or instruments in its possession or under its control. Notwithstanding the above provision, the escrow depository may carry bonds or deposit cash or securities above the amounts required by the commissioner.”

SECTION 4. Section 449-14, Hawaii Revised Statutes, is amended to read as follows:

“**§449-14 Fees.** (a) The following fees shall be paid by licensed escrow depositories to the commissioner and, together with any administrative penalty or other charge assessed under this chapter, shall be deposited into the compliance resolution fund established pursuant to [§]section[§] 26-9(o):

- (1) For filing and investigation of an escrow depository’s application for license, \$2,000;
- (2) For an application for approval to establish a branch office;
- (3) For an application for approval to relocate an existing office or branch;
- (2) (4) For initial issuance and annual renewal of an escrow depository’s license, \$100;
- (3) (5) For initial issuance and annual renewal of a branch office license, \$50; [and]
- (4) (6) For reissuance of a license [~~or endorsement on the license~~] for the change in the business address of its office, \$25[-]; and
- (7) For an application for approval to cease business as an escrow depository.

(b) For all escrow depositories examined by the commissioner or the commissioner’s staff, the commissioner:

- (1) May charge an examination fee based upon the cost per hour per examiner. The hourly fee shall be \$40;
- (2) May charge additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination; and
- (3) Shall bill the affected escrow depository for examination fees and expenses as soon as feasible after the close of the examination or investigation. The affected escrow depository shall pay the division within thirty days following the billing. All payments shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). Any dispute by the affected escrow depository relating to these billings shall be reviewed by the commissioner who may modify, waive, or suspend any billing.

(c) An escrow depository that fails to make a payment required by this section shall be subject to an administrative penalty of not more than \$200 per day for each day it is in violation of this section.

(d) Any fee authorized by this section may be set or modified by the commissioner by rule adopted pursuant to chapter 91.”

SECTION 5. Section 449-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every licensee under this chapter shall have the responsibility of a trustee for all moneys, other consideration, or instruments received by it. No licensee shall mingle any such moneys or other property with its own moneys or other

property, or with moneys or other property held by it in any other capacity. All moneys held by a licensee in escrow as herein defined shall be ~~[held intact and]~~ deposited in financial institutions, payable on demand. Under this chapter, deposits in financial institutions are limited to sweep accounts as described in this section, checking accounts, money market deposit accounts, and savings accounts with no specified maturity date. Deposits at financial institutions may be held in sweep accounts, provided that:

- (1) The licensee using the sweep account shall have a net worth of not less than \$1,000,000;
- (2) The sweep account is a deposit account administered by a financial institution in which the moneys over a minimum balance are periodically transferred into a money market mutual fund account invested only in obligations of:
 - (A) The United States government;
 - (B) Agencies backed by the full faith and credit of the United States government; or
 - (C) Agencies originally established or chartered by the United States government to serve public purposes; andperiodically recredited to the sweep account; and
- (3) The licensee is liable for all moneys transferred to the money market mutual fund account under the sweep account, including any loss of value.”

SECTION 6. Section 449-16.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§449-16.5]~~ **[Interest] Earnings on funds.** In all escrow agreements involving the purchase of real property or appurtenances thereon and in which an escrow depository acts as a fiduciary party holding the funds in escrow, any ~~[interest earned]~~ earnings on such funds during the holding thereof shall accrue to the credit of the purchaser in such transaction unless otherwise instructed in writing by the purchasers and sellers in the escrow.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating To Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. 432:1-407, Hawaii Revised Statutes, is amended to read as follows:

“~~[§432:1-407]~~ **Protection against insolvency.** (a) Net worth requirements are as follows:

- (1) Before issuing a certificate of authority pursuant to section 432:1-301, the commissioner shall require that the mutual benefit society has an initial net worth of [~~\$1,500,000~~] \$2,000,000 and the society shall thereafter maintain the minimum net worth required under paragraph (2);
- (2) Except as provided in [~~paragraph (3),~~] paragraphs (3) and (4), every mutual benefit society shall maintain a minimum net worth equal to the greater of:
 - (A) [~~\$1,500,000;~~] \$2,000,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000; or
 - (C) An amount equal to eight per cent of the sum of annual health care expenditures and operating expenses as reported on the most recent financial statement filed with the commissioner;
- (3) The minimum net worth requirement set forth in paragraph (2)(A) shall be phased in as follows:
 - (A) Seventy-five per cent of the required amount by January 1, 2001;
and
 - (B) One hundred per cent of the required amount by December 31, 2002;
and
- [~~(3)~~] (4) The minimum net worth requirement set forth in subparagraph (2)(C) shall be phased in as follows:
 - (A) Fifty per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1997;
 - (B) Seventy-five per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1998; and
 - (C) One hundred per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1999.
- (b) Deposit requirements are as follows:
 - (1) Unless otherwise provided below, each mutual benefit society shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
 - (2) A mutual benefit society that is in operation on July 3, 1997 shall make a deposit equal to \$150,000. Within one year after July 3, 1997, a society that is in operation on July 3, 1997 shall make an additional deposit of \$150,000 for a total of \$300,000;
 - (3) Deposits shall be an admitted asset of the mutual benefit society in the determination of net worth;
 - (4) All income from deposits shall be an asset of the mutual benefit society. A society that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be subject to approval by the commissioner before being deposited or substituted;
 - (5) The deposit shall be used to protect the interests of the mutual benefit society's members and to assure continuation of health care services to

members of a society which is in rehabilitation, liquidation, or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a society is placed in receivership or liquidation, the deposit shall be an asset subject to article 15 of chapter 431; and

- (6) The commissioner may reduce or eliminate the deposit requirement if the mutual benefit society deposits with the director of finance or the insurance commissioner, for the protection of all subscribers and members, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to that effect, duly authenticated by the appropriate state official holding the deposit.

(c) Every mutual benefit society, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium, and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. The liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the society.

(d) Every contract between a mutual benefit society and a participating provider of health care services shall be in writing and shall set forth that in the event the society fails to pay for health care services as set forth in the contract, the subscriber or member shall not be liable to the provider for any sums owed by the society. If a contract with a participating provider has not been reduced to writing as required by this subsection, or if a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or member sums owed by the society. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or member to collect sums owed by the society.

(e) The commissioner shall require that each mutual benefit society have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after the insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the society's insolvency for which premium payment has been made and until the members' discharge from inpatient facilities;
- (3) Insolvency reserves;
- (4) Acceptable letters of credit; or
- (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.

(f) An agreement to provide health care services between a provider and a mutual benefit society shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

(g) Each domestic mutual benefit society shall prepare for review by the commissioner on or before the forty-fifth day of each quarter, a copy of its quarterly net solvency report verified by at least two principal officers. The commissioner may prescribe the forms on which the reports are to be prepared. Each domestic mutual benefit society shall maintain a copy of its current net solvency report on the premises of its primary place of business. The commissioner may order an examina-

tion, subject to article 2 of chapter 431, to determine whether a domestic mutual benefit society is in compliance with this section. Any domestic mutual benefit society that fails or refuses to prepare or produce for review the quarterly net solvency report as required by this subsection shall be liable for a penalty in an amount not less than \$100 and not more than \$500 per day.’’

SECTION 2. Section 432D-8, Hawaii Revised Statutes, is amended to read as follows:

“[§432D-8] **Protection against insolvency.** (a) Net worth requirements are as follows:

- (1) Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization has an initial net worth of [\$1,500,000] \$2,000,000 and shall thereafter maintain the minimum net worth required under paragraph (2)[-];
- (2) Except as provided in [paragraph (3);] paragraphs (3) and (4), every health maintenance organization shall maintain a minimum net worth equal to the greater of:
 - (A) [\$1,500,000;] \$2,000,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000;
 - (C) An amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner; or
 - (D) An amount equal to the sum of:
 - (i) Eight per cent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the commissioner; and
 - (ii) Four per cent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner~~[-];~~
- (3) The minimum net worth requirement set forth in paragraph (2)(A) shall be phased in as follows:
 - (A) Seventy-five per cent of the required amount by January 1, 2001; and
 - (B) One hundred per cent of the required amount by December 31, 2002; and
- [(3)] (4) The following shall apply in determining compliance with the requirements of this subsection:
 - (A) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated;
 - (B) The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses; and
 - (C) Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(b) Deposit requirements are as follows:

- (1) Unless otherwise provided below, each health maintenance organization shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
 - (2) A health maintenance organization that is in operation on January 1, 1996, shall make a deposit equal to \$150,000. Within one year after January 1, 1996, a health maintenance organization that is in operation on January 1, 1996, shall make an additional deposit of \$150,000 for a total of \$300,000;
 - (3) Deposits shall be an admitted asset of the health maintenance organization in the determination of net worth;
 - (4) All income from deposits shall be an asset of the health maintenance organization. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being deposited or substituted;
 - (5) The deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of health care services to enrollees of a health maintenance organization which is in rehabilitation or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of article 15 of chapter 431; and
 - (6) The commissioner may reduce or eliminate the deposit requirement if the health maintenance organization deposits with the director of finance of this State, or the insurance commissioner, or other official body of the state or jurisdiction of domicile of such health maintenance organization, for the protection of all subscribers and enrollees, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to such effect, duly authenticated by the appropriate state official holding the deposit.
- (c) Every health maintenance organization, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. Such liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization.
- (d) Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the health maintenance organization. In the event that a contract with a participating provider has not been reduced to writing as required by this subsection or that a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or enrollee sums owed by the health maintenance organization. No participating pro-

vider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization.

(e) The commissioner shall require that each health maintenance organization have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after an insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;
- (3) Insolvency reserves;
- (4) Acceptable letters of credit; or
- (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.

(f) An agreement to provide health care services between a provider and a health maintenance organization shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

(g) Each health maintenance organization shall prepare for review by the commissioner on or before the forty-fifth day of each quarter, a copy of its quarterly net solvency report verified by at least two principal officers. The commissioner may prescribe the forms on which the reports are to be prepared. Every health maintenance organization shall maintain a copy of its current net solvency report on the premises of its primary place of business. The commissioner may order an examination, subject to article 2 of chapter 431, to determine whether a health maintenance organization is in compliance with this section. Any health maintenance organization that fails or refuses to prepare or produce for review the quarterly net solvency report as required by this subsection shall be liable for a penalty in an amount not less than \$100 and not more than \$500 per day."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 186

S.B. NO. 1315

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 303-2, Hawaii Revised Statutes, is amended to read as follows:

"§303-2 Contract for purchase of annuity or investment in custodial account. (a) The department of education and the University of Hawaii, on behalf of any employee of the respective institutions, may enter into a written agreement with any employee to purchase for the employee:

- (1) An annuity contract under section 403(b) of the Internal Revenue Code of 1986, as amended, from an insurer who holds a certificate of authority under section 431:3-201[;] or certificate of registration of dealer in securities under chapter 485, or both, and who complies with the requirements established by the respective institution and agrees to abide by the terms, conditions, rules, or regulations of the respective institution; or
- (2) An annuity contract qualified under section 401(k) of the Internal Revenue Code of 1986, as amended, which provides a nationwide retirement trust for a group of college or university football coaches who, due to the nature of their jobs, change employers frequently.

(b) The University of Hawaii and after December 31, 2003, the department of education may pay amounts to a custodial account established on behalf of the employee pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended.”

SECTION 2. Section 303-3, Hawaii Revised Statutes, is amended to read as follows:

“**§303-3 Withholding.** (a) The department of education and the University of Hawaii may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount of the premiums payable on account of the annuity contract, and shall make such premium payments on behalf of the employee. The department of education and the University of Hawaii may contract with third parties to administer plans to ensure compliance with the Internal Revenue Code of 1986, as amended, state and federal laws, and for the withholding of amounts from the salaries of their employees payable on account of annuity contracts and for making payments on their behalf. Costs for implementing and administering these plans for the University of Hawaii shall be borne by the employees or service providers maintaining annuity contracts[-], as determined by the University of Hawaii. Costs for implementing and administering these plans for the department of education shall be borne by the insurance service providers offering the annuity products, or the annuity entity selling or maintaining the annuity contracts on behalf of the employees of the department of education.

(b) The University of Hawaii and after December 31, 2003, the department of education may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount payable on account of the custodial account, and shall make the payments on behalf of the employee. The University of Hawaii and the department of education may contract with third parties to administer plans [for] to ensure compliance with the Internal Revenue Code of 1986, as amended, state and federal laws and, for the withholding of amounts from the salaries of their employees payable on account of custodial accounts and for making payments on their behalf. Costs for implementing and administering [these plans] the plan for the University of Hawaii shall be borne by the employees or service providers maintaining custodial accounts[-] as determined by the University of Hawaii. Costs for implementing and administering the plan for the department of education shall be borne by the custodial service provider offering the custodial account product, or the custodial entity selling or maintaining the custodial accounts on behalf of employees of the department of education.”

SECTION 3. Section 303-3.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§303-3.5]]~~ **Limitation on liability.** The University of Hawaii, department of education, and the State of Hawaii shall not be held liable for the sums deferred or the results of any investment product.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval, except that the authority of the department of education to pay amounts to a custodial account under sections 303-2(b) and 303-3(b), Hawaii Revised Statutes, shall become effective January 1, 2004.

(Approved May 29, 2001.)

ACT 187

S.B. NO. 1382

A Bill for an Act Relating to State Officers and Employees Excluded from Collective Bargaining and Making Appropriations and Other Adjustments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 89C-2, Hawaii Revised Statutes, provides for compensation, terms, and conditions of employment for public officers and employees who are excluded from collective bargaining. To maintain parity with other state employees and based on a settlement for a two-year collectively bargained agreement with the exclusive representative of bargaining units 3, 4, and 13, an immediate appropriation is needed to fund salary increases and other cost adjustments for certain excluded legislative officers and employees.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary for fiscal year 2001-2002 and the following sums or so much thereof as may be necessary for fiscal year 2002-2003 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Office of the auditor	\$63,621	\$146,329
Ethics commission	\$16,584	\$ 38,124
Office of the legislative reference bureau	\$64,465	\$142,487
Office of the ombudsman	\$25,500	\$ 58,104

SECTION 3. The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act.

SECTION 4. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds, shall be paid wholly or proportionally, as the case may be, from the respective funds.

SECTION 5. Funds appropriated or authorized by this Act that are not expended or encumbered by the last day of the fiscal year for which they were appropriated or authorized shall lapse as of those dates.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 29, 2001.)

ACT 188

S.B. NO. 1385

A Bill for an Act Relating to the Salary Structure of Educational Officers in the Department of Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature has recently raised concerns about whether various state personnel systems are properly aligned and equitable. In response, the auditor looked at the classification and compensation system for educational officers at the department of education and whether its educational officer jobs are paid comparably to jobs in other state agencies and the private sector.

The auditor found inequities in the department of education's classification and compensation system for educational officers. In addition, the auditor found that the department pays more than other agencies for comparable jobs. The auditor is of the opinion that the department needs to adopt a more appropriate classification and compensation system to alleviate the inequities.

The auditor recommends that the legislature consider:

- (1) Requiring the board of education to take the steps necessary to correct the inequities that were identified;
- (2) Requiring the department of education to obtain the assistance of the department of human resources development in making the necessary changes; and
- (3) Establishing a process of future independent audits of the classification and compensation system for educational officers.

Consequently, the purpose of this Act is to implement certain recommendations of the auditor with respect to the salary structure of educational officers in the department of education, as discussed in Auditor's Report No. 00-13 (April 2000).

SECTION 2. (a) The department of education shall:

- (1) Conduct a classification study in order to better assess positions, allocations, and classifications. This shall include ensuring that minimum requirements and equivalencies are more in line with the type of work required upon entry into the classification. The department shall consult with the University of Hawaii, office of human resources, in exploring alternatives to the current salary schedule, minimum qualification requirements, and position descriptions;
- (2) Conduct a formal, comprehensive salary survey;
- (3) Implement a formal job evaluation methodology that is consistent with the class structure adopted; and
- (4) Report its findings to the legislature no later than twenty days before the 2002 regular session.

(b) The department of education shall obtain the assistance of the University of Hawaii, office of human resources, in evaluating the department's salary schedule, classification system, and qualification for employment.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 189

S.B. NO. 1405

A Bill for an Act Relating to Special Purpose Revenue Bonds for Hi-Tech Hawaii, Inc.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the public interest to encourage the development of high technology research and development facilities on public lands or lands administered by the department of Hawaiian home lands (DHHL). The issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act will encourage the development of such facilities by lowering interest rates in financing capital improvement costs associated with the construction and operations of these facilities through the use of tax exempt special purpose revenue bonds, thereby making such projects more economically feasible.

The legislature finds that Hi-Tech Hawai'i, Inc. is engaged in the acquisition and development of facilities to assist the high technology industry in the planning, design, and construction of research development and technology support facilities in the State. The legislature further finds that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act to assist Hi-Tech Hawai'i, Inc. in constructing this project will make the development more economically feasible and provide numerous benefits, including the following:

- (1) The general public will benefit by reducing DHHL's dependency on state revenues and improving the income stream of DHHL to further support its mission to provide housing for native Hawaiians;
- (2) The general public will benefit because the lower cost to site such research and development facilities will encourage high technology enterprises to locate to Hawaii, thereby increasing economic opportuni-

ties for residents and those dislocated residents with technical education to return to Hawaii;

- (3) The general public will benefit environmentally because such research and development facilities are representative of an environmentally clean industry and minimal use of state resources; and
- (4) The University of Hawaii will benefit by providing its students with access to high technology research and development companies and their projects, and these benefits will also promote the general economy of the State.

SECTION 2. The legislature further finds that the activities of Hi-Tech Hawai'i, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to industrial enterprises as defined therein and are qualified to be financed through the issuance of special purpose revenue bonds.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance is hereby authorized, with the approval of the governor, to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000 in one or more series for the purpose of assisting Hi-Tech Hawai'i, Inc., a Hawaii corporation (or a partnership in which Hi-Tech Hawai'i, Inc. is a general partner, or the successor in interest or assignee of Hi-Tech Hawai'i, Inc.), with the financing, refinancing, or both of the costs related to the acquisition and development of facilities to assist the high technology industry in the planning, design, and construction of high technology research, development, and technology support facilities, including the costs of constructing, equipping, and purchasing tangible assets (including land and easements for such facility).

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The department of budget and finance is authorized, with the approval of the governor, to issue from time to time (including times subsequent to June 30, 2004) refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3. Any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption, shall be bonds for the projects and purposes described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

ACT 190

S.B. NO. 710

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2001-2003 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 7:

	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$6,654,663	\$17,525,673
Special Funds	\$ 79,818	\$ 178,028
Federal Funds	\$ 117,103	\$ 300,757
Other Funds	\$ 9,186	\$ 24,184

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II¹

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2000-2001 and for fiscal biennium 2001-2003, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2000-2001</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
General Funds	\$316,400	\$653,153	\$1,967,717
Special Funds	-0-	\$ 4,462	\$ 14,854
Federal Funds	-0-	\$ 4,594	\$ 12,259
Other Funds	-0-	\$ 25,003	\$ 69,904

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2001, June 30, 2002, and June 30, 2003, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect upon approval.

(Approved May 30, 2001.)

Note

1. There is no part I designation.

ACT 191

H.B. NO. 204

A Bill for an Act Relating to Planned Community Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421J-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§421J-4]]~~ **Proxies.** (a) A proxy shall be in writing and shall be valid for only a specified meeting of the association and any adjournments of that meeting.

(b) A member of the association may give a proxy to any person or the board of directors as an entity, and the proxy may be limited as indicated by the member. No proxy shall be irrevocable unless:

- (1) The proxy is coupled with a financial interest in the unit; or
- (2) The proxy is held pursuant to a first mortgage of record encumbering a unit or an agreement of sale affecting a unit.
- (c) ~~[A proxy, to]~~ To be valid, ~~[must:]~~ a proxy shall:
 - (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
 - (2) Contain at least the name of the association, the date of the meeting of the association, the printed name and signature of the person or persons giving the proxy, the unit or units for which the proxy is given, and the date that the proxy is given; and
 - (3) Contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
 - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

(d) Any board of directors that uses association funds to distribute proxies that include the election of directors shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for nomination to the board accompanied by a statement, the board shall mail to all owners either:

- (1) A proxy form containing the names of all owners who have requested nomination to the board accompanied by their statements; or
- (2) A proxy form containing no names, but accompanied by a list of names of all owners who have requested nomination to the board and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

(e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.

(f) Nothing in this section shall prohibit the use of proxies for filling vacancies that occur after the notice of the annual meeting has been distributed.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on December 31, 2001.

(Approved May 31, 2001.)

ACT 192

H.B. NO. 647

A Bill for an Act Relating to the Disability and Communication Access Board.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the disability and communication access board has established a mechanism for credentialing sign language interpreters who do not possess national certification. Although the startup costs were underwritten by the disability and communication access board, in cooperation with the department of human services, the department of education, and the University of Hawaii, there is a need for ongoing financial support. The legislature further finds that the costs of each test, over and beyond administrative staff costs, can be offset by charging applicants a fee for the test or screening process.

The purpose of this Act is to:

- (1) Give the disability and communication access board authority to assess a fee to cover the costs of each test;
- (2) Make the tests self-supporting; and
- (3) Create a special fund to retain collected fees.

SECTION 2. Chapter 348F, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§348F- Disability and communication access board special fund. (a) There is established the disability and communication access board special fund to be administered by the disability and communication access board. All moneys received by the disability and communication access board as application fees for credentialing of interpreters shall be deposited into the special fund. All interest earned or accrued on moneys deposited into this special fund shall become part of the special fund.

(b) Moneys in the disability and communication access board special fund shall be expended to cover all costs of administering this chapter including the costs of administering the program for the state credentialing of interpreters.

§348F- Fees. The board may establish fees, pursuant to chapter 91, for applicants seeking state credentialing of interpreters.”

SECTION 3. There is appropriated out of the disability and communication access board special fund the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2002-2003 to carry out the purposes of the special fund.

ACT 193

The sums appropriated shall be expended by the disability and communication access board for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 193

H.B. NO. 731

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-8.41, Hawaii Revised Statutes, is amended to read as follows:

“~~[§304-8.41]~~ University of Hawaii commercial enterprises revolving fund. (a) Any law to the contrary notwithstanding, the University of Hawaii may engage in commercial enterprises that are related and incidental to the primary purposes of the university as set forth in this chapter, including but not limited to sponsorship of private, cultural, and athletic performances and sale of goods produced by university programs, or goods bearing the university logo.

(b) There is established a revolving fund for the University of Hawaii into which shall be deposited all revenues derived from the operation of commercial enterprises by university programs. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, without regard to chapters 76 through 80, 89, 103, and 103D. Revenues not expended as provided ~~[herein]~~ in this section may be transferred to other university funds to be expended for the general benefit of the university.

(c) Any law to the contrary notwithstanding, from July 1, 2001, to June 30, 2004, the university may transfer ~~[private]~~ all funds at its disposal, with the exception of general funds, into this revolving fund to finance the establishment of new enterprises.

(d) The university shall submit an annual report to the legislature on all funds transferred into the revolving fund and all expenditures from the revolving fund. The report shall be submitted to the legislature no later than twenty days prior to the beginning of each regular session.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

ACT 194

H.B. NO. 1243

A Bill for an Act Relating to Captive Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Counties authorized to form captives. Any county may establish a captive insurance company pursuant to article 19, chapter 431.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

“§431:19- Leased capital facilities. (a) One or more sponsors may form a leased capital facility under this article. A leased capital facility shall only insure the risks of its participants. The risks of the participants may be insured through participant contracts that segregate each participant’s or related participants’ liabilities through one or more protected cells.

(b) In addition to the information required by section 431:19-102, each application for a leased capital facility filed with the commissioner shall provide the following:

- (1) A business plan that sets forth in sufficient detail:
 - (A) The proposed organizational and operational structure of the leased capital facility;
 - (B) If the risks of the participants are segregated through one or more protected cells, the mechanisms by which the assets and liabilities of each protected cell will be segregated from those of other protected cells in the leased capital facility; and
 - (C) A fair and equitable plan for allocating direct and indirect expenses to each participant;
 and
- (2) All contracts or sample contracts between the leased capital facility and its participants.

(c) The owners or shareholders of a leased capital facility shall be limited to its sponsors and participants. However, the participants need not be owners or shareholders of a leased capital facility.

(d) No leased capital facility may insure any risks other than those of its participants.

(e) Within each protected cell, the leased capital facility shall only insure the risks of the participant or participants within the protected cell. If more than one participant is insured within a protected cell, all participants insured within that protected cell shall be related by being either partners, joint venturers, or within the same corporate family.

(f) No participant contract shall take effect without the commissioner’s prior written approval. The following shall constitute a change in the leased capital facility’s business plan and shall require the commissioner’s prior written approval:

- (1) The addition of each new protected cell;
- (2) The addition of a new participant;
- (3) The withdrawal of any protected cell; or
- (4) The withdrawal of a participant from a protected cell.

(g) Unless otherwise approved in writing by the commissioner and all of the participants within the protected cell, the assets of a protected cell, including any

collateral or other security with respect to the risks insured in that cell, shall only be used for the payment of expenses, claims, and liabilities attributable to the risks insured within that protected cell and not for any expenses, claims, or liabilities attributable to any other protected cell. The participants within the protected cell shall not be liable for any expenses or claims attributable to any other protected cell.

(h) Unless otherwise deemed necessary by the commissioner, the general assets of the leased capital facility may not be used to pay the insurance claims or insurance liabilities of a protected cell. General assets of the leased capital facility for purposes of this section shall include the capital and surplus contributed by the sponsors to the leased capital facility, but not any capital, surplus, or other assets contributed by such sponsors as a participant in a protected cell of the company.

(i) In addition to consolidated financial statements for the leased capital facility, each protected cell shall be accounted for separately on the books and records of the leased capital facility so as to reflect the financial condition and results of operations of the protected cell, including net income or loss, dividends, or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner.

(j) Each protected cell within a leased capital facility shall be established and maintained with sufficient assets, collateral, reinsurance, or other security, that in total, at least equal the reserves and other insurance liabilities attributed to that protected cell.

(k) No sale, exchange, assignment, or other transfer of assets or liabilities may be made by a leased capital facility between or among any of its protected cells without the consent of the affected protected cells.

(l) No sale, exchange, assignment, or other transfer of assets, liabilities, dividends, or distributions may be made from a protected cell to a sponsor or participant without the commissioner's approval, and in no event shall the approval be given if the transaction would result in the insolvency or financial impairment with respect to a protected cell.

(m) Each sponsored captive insurance company shall annually file with the commissioner financial reports as required by this article and as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(n) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell becoming insolvent, financially impaired, or otherwise unable to meet its claims or expense obligations.

(o) All contracts or other documentation of insurance or reinsurance issued by the leased capital facility with respect to a protected cell, shall clearly disclose that the assets, collateral, reinsurance, or other security, as the case may be, of that protected cell, and only the assets, collateral, reinsurance or other security, are available to pay the insurance obligations of that protected cell. Notwithstanding the foregoing, and subject to article 19 and any other applicable law or regulation, the failure to include such language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent this section.

(p) All financial records of the leased capital facility, including records pertaining to any protected cells, shall be made available to the commissioner or the commissioner's designated agent."

SECTION 3. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:
““Participant” means any entity, partners, or joint venture partners, or members within the same corporate family of the entity that are insured by a leased

capital facility, where the losses of the participant may be limited through a participant contract to the assets of a protected cell. A sponsor may be a participant.

“Participant contract” means a contract by which a leased capital facility insures the risks of a participant and, if the risks are segregated through one or more protected cells, limits the losses of the participant to the assets of a protected cell.

“Protected cell” means a separate account established and maintained by a leased capital facility for one participant.

“Sponsor” means any entity that is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a leased capital facility.”

2. By amending the definition of “leased capital facility” to read:

~~““Leased capital facility” means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its [members, but whose owner or owners may, subject to approval of the commissioner, be persons or entities other than the members.] participants.”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 195

H.B. NO. 1309

A Bill for an Act Relating to Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000 in one or more series, for the purpose of assisting Science and Technology International and its subsidiaries in financing the capital costs related to the relocation to, and construction of, a new facility. The legislature hereby finds and determines that the activities and facilities of Science and Technology International constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2004, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be

necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

ACT 196

S.B. NO. 65

A Bill for an Act Relating to Criminal Procedure.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the statutory language relating to the identification processing for penal summons cases under section 846-2.5, Hawaii Revised Statutes. Section 846-2.5 was amended by Act 119, Session Laws of Hawaii (SLH) 1985, for penal summons cases, and again in 1995 by Act 100, SLH 1995, for the purpose of including fingerprints of juvenile law violators in the State's Automated Fingerprint Identification System (AFIS). The resulting statutory language requires clarification to avoid any misinterpretation of the intent of these two legislative acts.

SECTION 2. Section 846-2.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general shall select and enforce systems of identification, including fingerprinting, ~~[without the necessity of a court order,]~~ of: all adults arrested for a criminal offense~~;~~¹ all persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge; and without the necessity of a court order, children who are twelve years of age or older who come within section 571-11(1) and who are taken into custody for committing an act ~~[which,]~~ that, if committed by an adult, would be a felony, a misdemeanor, or a petty misdemeanor;¹ ~~[and all persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and].~~ The attorney general shall provide for the collection, recording, and compilation of data and statistics relating to crime~~;~~ provided that, unless, Unless a child's physical fingerprint record is otherwise authorized to be entered into the system, and notwithstanding any law to the contrary, the attorney general shall purge any child's electronic fingerprint record entered into the identification system pursuant to this subsection~~;~~ either, upon court order~~;~~ or when: the child attains the age of twenty-five years~~;~~ when~~;~~ the child is determined not to be responsible for committing the act for which the fingerprints were taken~~;~~ or [when] the child is not informally adjusted under section 571-31.4 and a petition is not filed within one year from the date the child is

taken into custody. The court shall notify the attorney general when a child is determined not to be responsible for committing the act for which the fingerprints were taken. A child's fingerprint record shall not be transmitted to any system outside the State.

Notwithstanding any law to the contrary, upon the conviction of a person to whom a penal summons complaint has been issued for a criminal offense, or upon the granting of a deferred acceptance of a guilty or nolo contendere plea or a conditional discharge to such person, the court shall order the person to report, within seven days, to the appropriate police department, sheriff's office, or other governmental agency for identification processing, including fingerprinting and photographing, as provided under this subsection. Failure to comply with a court order for identification processing under this subsection will constitute criminal contempt of court in violation of section 710-1077.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of the systems of identification and statistics in their respective jurisdictions; provided that those expenses in connection with matters exclusively within the control of the State shall be borne by the State; and provided further that the State shall provide for the management and equipment maintenance of the computerized fingerprint identification system.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in a manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable for the:

- (1) Study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law; and
- (2) Examination of the records of the operations of those officers and the results thereof."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. So in original.

ACT 197

S.B. NO. 224

A Bill for an Act Making an Appropriation for Pineapple Research.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The pineapple industry continues to be a primary agricultural industry in the State. According to a "Statistic of Hawaii Agriculture" report, pineapple had a \$98,500,000 farm value in 1999, a significant increase from the \$91,700,000 farm value in 1997.

The legislature finds that pineapple is a leader among Hawaii's agriculture commodities and a strong component of the State's economic base. In fact, the three pineapple companies pay \$6,200,000 in state taxes, employ three thousand workers

with payrolls of more than \$57,000,000, and generate \$53,000,000 of ancillary support business with the airlines, ocean shipping, box manufacturing, construction, and distribution industries.

The legislature finds that losing this industry would be not only economically damaging to the State, but socially damaging as well, for the pineapple industry sustains a rural lifestyle, which is an integral part of our lives and is a significant part of the "Hawaii visitor experience."

Furthermore, the industry preserves a green Hawaii through more than twenty-two thousand acres of pineapple fields on Maui and Oahu, many of which preserve significant view planes, and historic and archeological sites.

The legislature also finds that Hawaii's pineapple industry has met shifts in market demands and increased global competition through value-added products, such as fresh chilled or cut pineapple; sweeter, low-acid premium fresh fruit; and pineapple salsa. In addition, Hawaii's pineapple industry faces increased and continued competition.

Thus, ongoing research is essential to the growth of the industry and to improvements to the quality and quantity of pineapple production in the State. In partnership with the State, the pineapple industry provides more than \$190,000 of in-kind support to the \$182,413 in appropriations for research. The three pineapple companies also conduct more than \$986,000 of proprietary research per year.

The purpose of this Act is to appropriate funds for pineapple research.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$39,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$39,000, or so much thereof as may be necessary for fiscal year 2002-2003, for pineapple research.

The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 31, 2001.)

ACT 198

S.B. NO. 591

A Bill for an Act Relating to Occupational Therapists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 457G, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§457G- Definitions. As used in this chapter unless the context otherwise requires:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Direct supervision" means daily, direct contact at the site of work by a registered occupational therapist.

"Occupational therapy services" include:

- (1) The assessment of needs and provision of treatment in consultation with the individual, family, or other appropriate persons;
- (2) Interventions directed toward developing, improving, ascertaining, enhancing, or restoring:

- (A) Daily living skills, including self-care skills and activities that involve interactions with others and the environment, work readiness or work performance, play skills or leisure capacities, or educational performance skills; or
- (B) Sensorimotor, oral-motor, perceptual, or neuromuscular functioning; or emotional, motivational, cognitive, or psychosocial components of performance;
- (3) The education of the individual, family, or other appropriate persons in carrying out appropriate interventions;
- (4) Design, development, adaptation, application, or training in the use of:
 - (A) Assistive technology devices; and
 - (B) Rehabilitative technology such as orthotic or prosthetic devices;
- (5) The application of physical agent modalities as an adjunct to, or in preparation for, purposeful activity;
- (6) The application of ergonomic principles, and the adaptation of environments and processes to enhance functional performance; and
- (7) The promotion of health and wellness.

§457G- Temporary permit. (a) An individual who has completed the educational requirements and supervised field work experience required by this chapter, but who has not yet passed the national certification examination, may be issued a temporary permit to perform occupational therapy services under the direct supervision of an individual who is duly registered under this chapter.

Applicants for a temporary permit shall submit an application to the department in the form prescribed by the department, which shall be accompanied by:

- (1) A non-refundable application fee of \$25, which shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o);
- (2) A letter from a registered occupational therapist verifying that the registered occupational therapist:
 - (A) Will provide direct supervision over all occupational therapy services performed by the applicant; and
 - (B) Advise the department of any change in or the termination of the supervisory relationship within forty-eight hours of the change.

Applicants shall also provide an original certificate of confirmation of examination registration and eligibility to examine, which shall be submitted directly to the department by the National Board for Certification in Occupational Therapy or its successor organization.

(b) The department may issue a non-renewable temporary permit for not longer than one year; provided that the temporary permit shall expire upon:

- (1) Termination of the supervisory relationship between the permittee and the supervising registered occupational therapist; or
- (2) Determination by the department that the applicant does not possess the qualifications required for the permit."

SECTION 2. Section 457G-1, Hawaii Revised Statutes, is amended to read as follows:

"§457G-1 Practice of occupational therapy; qualifications; registration.

(a) No person shall represent, advertise, or announce oneself, either publicly or privately, as an occupational therapist, nor use, in connection with the person's name or place of business, the words "occupational therapist", "certified occupational therapist", "occupational therapist registered", or the letters "OT", "COT", or "OTR", or any other words, letters, abbreviations, or insignia indicating or imply-

ing that such person is an occupational therapist unless such person registers the person's name and business address biennially with the department of commerce and consumer affairs in a manner established by rules adopted pursuant to chapter 91, and meets the qualifications of section 457G-2.

(b) The department shall maintain and biennially update a list of the names and business addresses of the occupational therapists who are registered under subsection (a).

(c) Nothing in this chapter shall be construed to apply to occupational therapy assistants.

(d) A registration granted under this chapter shall mean that the person has met requirements that include minimum practice standards to provide protection to the public and is permitted to use the title and engage in the practice as an occupational therapist. In the granting of permission to engage in this profession, and consistent with section 436B-2, the definition for "license" is inclusive of a registration issued under this chapter and, as such, an occupational therapist that holds a registration shall be similarly regarded as an occupational therapist that holds a license."

SECTION 3. Section 457G-2, Hawaii Revised Statutes, is amended to read as follows:

"§457G-2 Qualifications of occupational therapists and occupational therapy assistants. Occupational therapists and occupational therapy assistants shall have completed the educational requirements and supervised field work experience required for certification by the ~~[American Occupational Therapy Association;]~~ National Board for Certification in Occupational Therapy, and shall have passed a national certification examination administered by that association."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 199

S.B. NO. 854

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For all taxable years beginning after December 31, [1999,] 2000, as used in this chapter "Internal Revenue Code" means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [1999,] 2000, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978."

SECTION 2. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department of taxation shall submit to each regular session of the legislature a bill to amend sections 235-2.3 [and], 235-2.4, and 235-2.45 and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation."

SECTION 3. Section 235-7.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For the purpose of this section:

- (1) The term "allocable parental tax" means the excess of:
 - (A) The tax which would be imposed by section 235-51 on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this section applies, over,
 - (B) The tax imposed by section 235-51 on the parent without regard to this section.

For purposes of subparagraph (A), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

- (2) A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this section applies.
- [3] ~~If tax is imposed under section 644(a)(1) (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying paragraph (1) to the taxable year of the parent in which such sale or exchange occurs:~~

- (A) Taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i) of the Internal Revenue Code, and
- (B) The amount described in paragraph (1)(B) shall be increased by the amount of the excess referred to in section 644(a)(2)(A) of the Internal Revenue Code.

Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for this section as provided in section 235-2.4.

- (4) [3] Except as provided in rules, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year."

SECTION 4. Section 235-51, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The tax imposed by section [235-2.4] 235-2.45 on estates and trusts shall be determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1998:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.60% of taxable income
Over \$2,000 but not over \$4,000	\$32.00 plus 3.90% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$110.00 plus 6.80% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$382.00 plus 7.20% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$670.00 plus 7.50% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$970.00 plus 7.80% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,282.00 plus 8.20% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,102.00 plus 8.50% of excess over \$30,000
Over \$40,000	\$2,952.00 plus 8.75% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.50% of taxable income
Over \$2,000 but not over \$4,000	\$30.00 plus 3.70% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$104.00 plus 6.40% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$360.00 plus 6.90% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$636.00 plus 7.30% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$928.00 plus 7.60% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,232.00 plus 7.90% of excess over \$20,000

Over \$30,000 but not over \$40,000	\$2,022.00 plus 8.20% of excess over \$30,000
Over \$40,000	\$2,842.00 plus 8.50% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.40% of taxable income
Over \$2,000 but not over \$4,000	\$28.00 plus 3.20% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$92.00 plus 5.50% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$312.00 plus 6.40% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$568.00 plus 6.80% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$840.00 plus 7.20% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,128.00 plus 7.60% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$1,888.00 plus 7.90% of excess over \$30,000
Over \$40,000	\$2,678.00 plus 8.25% of excess over \$40,000

SECTION 5. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) In determining the deduction allowed by subsection (c)(4) an employee shall be entitled to withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by rules) estimated itemized deductions and tax credits allowable under this chapter; and such additional deductions and other items as may be specified by the director in rules. For the purposes of this subsection a fractional number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to the next whole number.

(1) As used in this subsection, unless the context otherwise requires:

(A) “Estimated itemized deductions” means the aggregate amount which the employee reasonably expects will be allowed as deductions under sections 235-2.3, 235-2.4, 235-2.45, and 235-7, other than the deductions referred to in Internal Revenue Code section 151 and those deductions required to be taken into account in determining adjusted gross income under Internal Revenue Code section 62(a) (with the exception of paragraph 10 thereof) for the estimation year. In no case shall the aggregate amount be greater than the sum of:

(i) The amount of the deductions reflected in the employee’s net income tax return for the taxable year preceding the estimation year of (if a return has not been filed for the preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year; or

- (ii) The amount of estimated itemized deductions and tax credits allowable under this chapter and any additional deductions to which entitled; and
 - (iii) The amount of the employee's determinable additional deductions for the estimation year.
 - (B) "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year;
 - (C) "Determinable additional deductions" means those estimated itemized deductions which:
 - (i) Are in excess of the deductions referred to in subparagraph (A) reflected on the employee's net income tax return for the taxable year preceding the estimation year; and
 - (ii) Are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of such deductions on the net income tax return for the estimation year.
 - (D) "Estimation year", in the case of an employee who files the employee's return on the basis of a calendar year, means the calendar year in which the wages are paid; provided that in the case of an employee who files the employee's return on a basis other than the calendar year, the employee's estimation year, and the amounts deducted and withheld to be governed by the estimation year, shall be determined under rules prescribed by the director of taxation.
- (2) Under this subsection, the following special rules shall apply:
- (A) Married individuals. The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year;
 - (B) Limitation. In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exceptions) to offset the liability for tax under this chapter with respect to the wages from which the amounts are deducted and withheld, the director may by rule reduce the withholding allowances to which those employees would, but for this subparagraph, be entitled under this subsection;
 - (C) Treatment of allowances. For purposes of this chapter, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.
- (3) The director may prescribe tables by rule under chapter 91 pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2000.

(Approved May 31, 2001.)

ACT 200

S.B. NO. 1054

A Bill for an Act Relating to the Management of Financing Agreements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 37D, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§37D-9 Line of credit. The department may contract with a financial institution for one or more lines of credit in such amounts and for such periods as the legislature shall from time to time determine. The department, on behalf of a requesting agency, may borrow under a line of credit and use the amount or amounts borrowed to pay the cost of the improvements, use, or acquisition of real or personal property comprising a project. Upon the execution and delivery of a financing agreement to refinance the amount or amounts borrowed under such line of credit, the department shall apply the proceeds thereof to the repayment of such amount or amounts.”

SECTION 2. Section 37-62, Hawaii Revised Statutes, is amended by amending the definition of “financing agreement” to read as follows:

““Financing agreement” means any lease purchase agreement, installment sale agreement, loan agreement, line of credit, or any other agreement to finance the improvement, use, or acquisition of real or personal property that is or will be owned or operated by the State or any agency or to refinance any such previously executed financing agreement including certificates of participation[-] relating thereto.”

SECTION 3. Chapter 37D, Hawaii Revised Statutes, is amended to read as follows:

“[H]CHAPTER 37D[H] MANAGEMENT OF FINANCING AGREEMENTS

§37D-1 Definitions. Unless the context requires otherwise, as used in this chapter:

“Agency” or “participating agency” means the judiciary, any executive department, any independent commission, any board, any authority, any bureau, any office, any other establishment of the State (except the legislature and its agencies), or any public corporation that is supported in whole or in part by state funds, or any agent thereof, authorized by law to expend available moneys[-]; provided that the Hawaii health systems corporation shall not be governed by this chapter for any financing agreement unless it elects to do so.

“Attorney general” means the attorney general of the State or any duly designated deputy attorney general.

“Available [~~funds~~]²² moneys” means [~~funds~~] moneys appropriated or otherwise made available, from time to time, by the legislature to pay amounts due under a financing agreement for the fiscal period in which the payments are due, together with any unexpended proceeds of the financing agreement, and any reserves or other

amounts that have been deposited in trust to pay amounts due under the financing agreement. The legislature shall not be obligated to appropriate or otherwise make ~~[funds]~~ moneys available.

“Certificate of participation” means any certificate evidencing a participation right or a proportionate interest in any financing agreement or the right to receive proportionate payments from the State or an agency due under any financing agreement.

“Credit enhancement agreement” means any agreement or contractual relationship between the State ~~[or any state agency]~~, the department, and any bank, trust company, insurance company, surety bonding company, pension fund, or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by this chapter.

“Department” means the department of budget and finance of the State.

“Director” means the director of finance of the State or any duly designated deputy director of finance.

“Financial institution” means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks, savings banks, savings and loan companies or associations, financial services loan companies, and credit unions.

“Financing agreement” means any lease purchase agreement, installment sale agreement, loan agreement, line of credit, or other agreement of the department to finance the improvement, use, or acquisition of real or personal property that is or will be owned or operated by ~~[the State or any state agency]~~ one or more agencies of the State, the department, or any participating agency, or to refinance previously executed financing agreements including certificates of participation~~[-]~~ relating thereto.

“Line of credit” means an account at a financial institution under which the financial institution agrees to lend money to the department from time to time to finance one or more projects that are authorized by this chapter.

“Personal property” means tangible personal property, software, and fixtures.

“Project” means the real and personal property to be acquired or improved by a participating agency with the proceeds of a financing agreement provided to the participating agency by the department.

“Property rights” means, with respect to personal property, the rights of a secured party under chapter 490, and, with respect to real property, the rights of a trustee or lender under a lease authorized by section ~~[37D-3(5)]~~ 37D-3(4).

“Software” includes software, training, and maintenance contracts related to the operation of computer equipment.

§37D-2 Financing agreements. [Only with the approval of the director, and]

(a) There is hereby established and authorized the financing agreement program of the State. Any agency desiring to acquire or improve projects through the financing agreement program established and authorized by this chapter shall submit a written request to the department providing such information as the department shall require. Notwithstanding any other law to the contrary, and except for the Hawaii health systems corporation, only with the approval by the attorney general as to form and legality~~[-, may the agency]~~ and upon the written request of one or more participating agencies may the department enter into a financing agreement in accordance with this chapter, except that the board of regents of the University of Hawaii may enter into a financing agreement in accordance with this chapter without the approval of the director and of the attorney general as to form and legality if the principal amount of the financing agreement does not exceed \$3,000,000. A financing agreement may be entered into ~~[at the]~~ by the department on behalf of one or

more participating agencies at any time (before or after commencement or completion of any [improvement] improvements or acquisitions to be financed) and shall be upon terms and conditions the [agency] department finds to be advantageous. In each case of a written request by the judiciary to participate in the financing agreement program, the department shall implement the request; provided that the related financing agreement shall be upon terms and conditions the department finds to be advantageous. Any financing agreement entered into by the [agency] department without the [approvals] approval required by this section shall be void and of no effect. A single financing agreement may finance a single item or multiple items of property to be used by multiple agencies or may finance a single item or multiple items of property to be used by a single agency. The department shall bill any participating agency that benefits from property acquired with the proceeds of a financing agreement for such participating agency's pro rata share of:

- (1) The department's costs of administration of the financing agreement program; and
- (2) The financing costs, including the principal and interest components of the financing agreement and insurance premiums;

on a monthly or other periodic basis, and may deposit payments received in connection with the billings with a trustee as security for a financing agreement. Any participating agency receiving such a bill shall be authorized and shall pay the amounts billed from the available moneys.

(b) Financing agreements shall be subject to the following limitations:

- (1) Amounts payable by [the] a participating agency to or upon the direction of the department in respect to a project and by the department under a financing agreement shall be limited to available [funds:] moneys. In no circumstance shall the [agency] department be obligated to pay amounts due under a financing agreement from any source other than available [funds:] moneys. If, by reason of insufficient available [funds] moneys or other reason, amounts due under a financing agreement are not paid when due, the lender may exercise any property right that the [agency] department has granted to it in the financing agreement, against the property that was purchased with the proceeds of the financing agreement, and apply the amounts so received toward payments scheduled to be made by the [agency] department under the financing agreement;
- (2) No property rights may be granted in property unless the property is being acquired, is to be substantially improved, is to be refinanced with the proceeds of a financing agreement, or is land on which the property is located;
- (3) [Except] Notwithstanding any other law to the contrary, and except for the Hawaii health systems corporation and as otherwise provided in this section with respect to the University of Hawaii, [the] and except as provided in chapter 323F as to the Hawaii health systems corporation, an agency shall not [enter into financing agreements under any provision of law other than this chapter if the principal amount of the financing agreement, together with the principal amount of any financing agreement previously issued by the agency for the same project, exceeds \$100,000; and] have the power to enter into a financing agreement, except through the department as authorized by this chapter, and nothing in this chapter shall be construed to authorize the sale, lease, or other disposition of property owned by an agency;
- (4) Except as otherwise provided in this section with respect to the University of Hawaii, the sale, assignment, or other disposition of any financ-

ing agreements, including certificates of participation^[7] relating thereto, shall require the approval of the director^[-]; and

- (5) The department shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for financing agreements.

§37D-3 Related agreements. With the approval of the ~~[director and the approval by the]~~ attorney general ~~[of]~~ as to form and legality, [an agency] the department may:

- (1) Enter into agreements with trustees, within or without the State, to hold financing agreement proceeds, payments, and reserves as security for lenders to accept assignments of rights in the financing agreement from, and to enforce such rights of, the lessor or other party thereto, and to issue certificates of participation for the right to receive payments due from the ~~[agency]~~ department under a financing agreement. The sale of certificates of participation shall be, at the option of the director, by negotiation or by competitive sale, in accordance with the procedures set out by section 39-55. The interest component of the certificates of participation shall be at such rate or rates payable at such time or times as the financing agreement may provide. The certificates of participation may be in one or more series; may bear such date or dates; may mature at such time or times not exceeding the lesser of:

(A) The weighted average economic life of the related project or projects; or

(B) Thirty years from their date;

may be payable in such medium of payment at such place or places within or without the State; may carry registration privileges; may be subject to such terms of redemption, to tenders for purchase or to purchase prior to their stated maturity at the option of the State or the holder, or both; and may contain such terms, covenants, and conditions; and may be in such form, either coupon or registered, as the financing agreement may provide. Amounts held by a trustee shall be invested by the trustee at the direction of the [agency] department in such investments as are permitted by state law and as shall be specified in the agreement with the trustee. Interest earned on any investment held by a trustee as security for a financing agreement may, at the option of the [agency,] department, be credited to the accounts held by the trustee and applied in payment of sums due under [a] such financing agreement;

- (2) Enter into credit enhancement agreements for financing agreements or certificates of participation; provided that the credit enhancement agreements shall be payable solely from available ~~[funds]~~ moneys and amounts received from the exercise of property rights granted under such financing agreements;

- (3) Use financing agreements to finance the costs of acquiring or refinancing property, plus the costs of reserves and credit enhancements and costs associated with obtaining the financing;

- ~~[(4) Use a single financing agreement to finance property to be used by multiple agencies;~~

- (5) (4) Grant leases of real property subject to section ~~[37D-2(2).]~~ 37D-2(b)(2). The leases may be for a term that ends on the date on which all amounts due under a financing agreement have been paid or provision for payment has been made or ten years after the last scheduled payment under a financing agreement, whichever is later. The leases may grant the lessor the right to evict the ~~[agency]~~ department or the participating agency, as the case may be, and exclude it from posses-

sion of the real property for the term of the lease, if the [agency] department or the participating agency, as the case may be, fails to appropriate or pay when due the amounts scheduled to be paid under a financing agreement or otherwise defaults under a financing agreement. Upon failure to pay or default, the lessor may sublease the land to third parties and apply any rentals toward payments scheduled to be made under a financing agreement;

- [(6)] (5) Grant security interests in personal property subject to section ~~[37D-2(2);]~~ 37D-2(b)(2). The security interests shall attach and be perfected on the date the [agency] department or the participating agency, as the case may be, takes possession of the personal property, or the date the lender advances money under a financing agreement, whichever is later. A security interest authorized by this section shall have, except as otherwise provided by law, priority over all other liens and claims. Upon failure to pay or default, the secured party shall have the rights and remedies available to a secured party under chapter 490 or a first, perfected security interest in goods and fixtures. No later than ten days after a security interest authorized by this section attaches, the [agency] department shall cause a financing statement for the security interest to be filed with the bureau of conveyances in the same manner as financing statements are filed for goods;
- [(7)] (6) Pledge any amounts that are deposited with a trustee in accordance with a financing agreement. The pledge shall be valid and binding from the time it is made, the amounts so pledged shall immediately be subject to the lien of the pledge without filing, physical delivery, or other act, and the lien of the pledge shall be superior to all other claims and liens of any kind whatsoever;
- [(8)] ~~Bill any other agency that benefits from property acquired with the proceeds of a financing agreement for an appropriate share of the financing costs, including debt service, on a monthly or other periodic basis, and deposit payments received in connection with the billings with a trustee as security for a financing agreement. Any agency receiving such a bill shall be authorized and shall pay the amounts billed from the first amounts legally available to it;~~
- (9) (7) Purchase fire and extended coverage or other casualty insurance, or liability, title, rental interruption, or other insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of [their] its interest, and covenant to maintain such insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase such insurance; and
- [(10)] (8) In connection with any financing agreement by which [any agency] the department, on behalf of an agency, leases or purchases property from another party, notwithstanding and without regard to chapter 171 or any other law, the [agency] department may lease or sell, on such terms as the [agency] department shall determine, to that party the site or property to be improved or otherwise to be leased or sold back to the [agency-] department.

§37D-4 Inclusion [in] of budget request. For each fiscal period, there shall be included with respect to each participating agency in the executive [and judiciary] budget requests or, in the case of the judiciary, the judiciary budget request, to the legislature, amounts sufficient to permit the payment of all amounts that will be due ~~[under]~~ on unpaid financing agreements during that fiscal period, including any

expenses and replenishment of any reserve funds up to the balances required by the respective financing agreements. Amounts so included in the judiciary budget request and so applied to the payment of such amounts due with respect to a judiciary project shall be deemed to be at all times for purposes of the judiciary budget act moneys of the judiciary, and not moneys of the department or any other executive department.

[H§37D-5[H]] Financing agreements not a general obligation of State.

Financing agreements shall:

- (1) Not be obligations for which the full faith and credit of the [agency-is] State, the department, or any participating agency are pledged; and
- (2) Have no claim or lien on any revenues or other moneys of the State, the department, or any participating agency except moneys appropriated or otherwise held in trust for such purpose.

Financing agreements entered into under this chapter shall not constitute “bonds” within the meaning of section 12 of article VII of the Constitution of the State. No holder or holders of any financing agreement entered into under this chapter shall have the right to compel any exercise of taxing power of the State, the department, or any participating agency to pay such financing agreements or the interest thereon and no moneys other than amounts appropriated or otherwise held in trust for such purpose shall be required to be applied to the payment thereof. Each financing agreement issued under this chapter shall recite in substance that such agreement, including the interest component thereof, shall not be an obligation for which the full faith and credit of the [agency-is] State, the department, or any participating agency are pledged, and that such financing agreement shall have no claim or lien on any revenues or other moneys of the State, the department, or any participating agency except moneys appropriated or otherwise held in trust for such purpose.

[H§37D-6[H]] Federal tax-exempt status; preference; protection. (a) To the extent practicable, financing agreements issued pursuant to this chapter shall be issued to comply with requirements imposed by applicable federal law providing that the interest on financing agreements shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director [or chair of the agency] may:

- (1) Enter into agreements;
- (2) Establish funds or accounts;
- (3) Make rebate payments to the federal government; and
- (4) Take any action required to comply with applicable federal tax law.

Nothing in this chapter shall prohibit the issuance of financing agreements, the interest on which may be included in gross income for federal income tax purposes.

(b) To [insure] ensure that interest on a financing agreement issued pursuant to this chapter that is excluded from gross income for federal income tax purposes, except as provided in subsection (a), on the date of issuance shall continue to be excluded, no state officer or employee shall authorize or allow any change, amendment, or modification to a financing agreement which would affect the exclusion of interest on such financing agreement from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director [or chair of the agency that entered into the financing agreement]. Failure to receive the approval of the director [or chair of such agency] shall render any change, amendment, or modification void.

[H§37D-7[H]] Financing agreements legal investments. All public officers and agencies, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are

regulated by law as to the character of their investment, may legally invest [funds] moneys within their control and available for investment in financing agreements of the [agency-] department. The purpose of this section is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds or moneys owned or controlled by them, including, without prejudice to the generality of the foregoing, sinking, insurance, investment, retirement, compensation, pension[,], and trust funds, and [funds] moneys held on deposit, for the purchase of any financing agreements of the [agency-] department.

§37D-8 Exemption from taxation. All real and personal property owned or operated by the State, the department, or any participating agency, and any interests created in or transfer or recording of the property or any interest in the property, and payments made under the financing agreements to which the property is subject shall be exempt from all state, county, and municipal taxation, and fees and charges of every kind. Financing agreements issued pursuant to this chapter and the income therefrom, including, without limitation, the interest component of any lease payments, shall be exempt from all taxation by the [agency] State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

[[§37D-9]] §37D-10 Litigation; jurisdiction. The director [of finance] may petition the supreme court for an opinion as to the validity of any financing or related agreement entered into pursuant to [the provisions of] this chapter. The petition shall constitute a case for purposes of section 602-5, and the supreme court shall have exclusive and original jurisdiction to receive and determine the question presented in the petition, irrespective of an actual controversy or dispute regarding the agreement or its validity.”

SECTION 4. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

- (G) To governmental bodies of the State;
- (H) As loans, under loan programs administered by a governmental body; and
- (I) For contracts awarded in accordance with the provisions of chapter 103F;
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;
 - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State; [and]
 - (K) Financing agreements under chapter 37D; and
 - ~~[(K)]~~ (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
 - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 201

S.B. NO. 1110

A Bill for an Act Relating to Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Criminal history and child abuse record checks for persons exempt pursuant to section 346-152. To be eligible to provide child care and to receive a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to a criminal history record check and a child abuse record check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; provided that the following relatives of the child who requires care: grand-parents, great grand-parents, aunts, uncles, and siblings aged eighteen or older living in a separate residence shall be required to agree to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center and a child abuse record check.”

SECTION 2. Section 346-151, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Child abuse record check’ means an examination of an individual’s child abuse confirmation history through:

- (1) An initial name inquiry into the state child welfare record files;
- (2) Subsequent child abuse confirmation history checks for new hires and rehires; and
- (3) An annual name inquiry into state child welfare record files.

“Child care subsidy” means a payment made to low-income parents, guardians, or other responsible parties to pay for the care of a child under the age of thirteen years, or age thirteen years or older if the child has qualifying special needs as defined under federal law.”

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by amending the title of part VIII to read as follows:

“[PART VIII.] CHILD CARE [FACILITIES]”

SECTION 4. Section 346-154, Hawaii Revised Statutes, is amended to read as follows:

“§346-154 Criminal history and child abuse record checks. (a) The department shall develop standards to [assure] ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include[-] but not be limited to[-] criminal history record checks[-] and child abuse record checks.

(b) An applicant to operate a child care facility shall submit to the department ~~[statements signed]~~ under penalty of ~~[perjury]~~ false swearing, statements signed by the applicant and prospective employees of the applicant ~~[indicating]~~:

- (1) Indicating whether the applicant or any of the prospective employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child, including threatened harm; and ~~[providing]~~
- (2) Providing consent to the department to conduct a criminal history record check and a child abuse record check and to obtain criminal history and child abuse record information for verification. The applicant and prospective employee of the applicant shall be fingerprinted for the purpose of complying with the criminal history record check.

(c) A provider shall submit to the department ~~[a statement signed]~~ under penalty of ~~[perjury]~~ false swearing, a statement signed by any employee hired after the initial licensure or registration ~~[indicating]~~:

- (1) Indicating whether the employee has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child, including threatened harm; and ~~[providing]~~
- (2) Providing consent to the department to conduct a criminal history record check and a child abuse record check and to obtain criminal history and child abuse record information for verification. The employee shall be fingerprinted for the purpose of complying with the criminal history record check.

~~[(e)]~~(d) The department shall obtain criminal history record information through the Hawaii criminal justice data center and child abuse record information from the department on the applicant and any prospective employee of the applicant, including any new employee after the applicant is issued a registration or license under this part. The Hawaii criminal justice data center may assess the applicant, prospective employee, or new employee a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations.

~~[(d)]~~(e) The department may deny an application for a license or registration to operate a child care facility if ~~[the]~~:

- (1) The applicant or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child, including threatened harm; and [if the]
- (2) The department finds that the criminal history or child abuse record of that applicant or prospective employee may pose a risk to the health, safety, or well-being of children.

(f) The department may request the provider to terminate the employment of a new employee or may suspend or revoke the license or registration of the provider who employs a new employee if ~~[the]~~:

- (1) The employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child, including threatened harm; and [if the]
- (2) The department finds that the criminal history or child abuse record of the new employee may pose a risk to the health, safety, or well-being of children."

SECTION 5. Section 346-156, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§346-156)]~~ **Penalty.** Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined ~~[not more than \$500.]~~ as follows:

- (1) Up to \$1,000 for the first violation; and
- (2) Up to \$3,000 for the second violation and each succeeding violation.”

SECTION 6. Section 346-163, Hawaii Revised Statutes, is amended to read as follows:

“§346-163 Licenses and temporary permits. If satisfied that the applicant meets the minimum standards established pursuant to section 346-162 and subject to the criminal history record checks and child abuse record checks of section 346-154, the department ~~[of human services]~~ shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for:

- (1) One year for new applicants and for those who have been licensed for less than four years; and
- (2) Two years for those who have been licensed for four years or more, unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of human services.

A temporary permit may be issued for a period of six months at the ~~[department of human services’]~~ department’s discretion to any applicant who is temporarily unable to conform to all of the minimum standards. Renewal of the temporary permit shall be left to the ~~[department of human services’]~~ department’s discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twenty-four months. Licenses and permits shall be conspicuously posted on the licensed premises.”

SECTION 7. There is appropriated out of the criminal history record improvement revolving fund the sum of \$53,000 or so much thereof as may be necessary for fiscal year 2001-2002 to effectuate the purposes of this Act.

The sum appropriated shall be expended by the department of the attorney general for purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval; provided that section 7 shall take effect July 1, 2001.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Public Notice Requirements for Public Land Dispositions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-16, Hawaii Revised Statutes, is amended to read as follows:

“§171-16 Notices. (a) Auctions. Public notice of any proposed disposition by auction shall be given at least once ~~[in each of three successive weeks statewide and, in addition, in the appropriate county, if the land is situated in the first, second, and fourth districts, the last public notice to be not less than ten days before the date of the auction;]~~ statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following:

- (1) Time and place of the auction;
- (2) General description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board of land and natural resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

(b) Drawings. Whenever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once ~~[a week for four successive weeks statewide and, in addition, in the appropriate county, if the land is situated in the first, second, and fourth districts;]~~ statewide and once in the county where the land being disposed of is located. The notice shall contain:

- (1) The qualifications required of applicants;
- (2) A general description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Date by which all applications must be filed, which date shall be not less than fourteen days after the last notice.

Within forty-five days after the closing date for applications, the board shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing.

The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant, in fact, qualified. The notice of the drawing shall state the time and place of the drawing. ~~[In addition to the notice to each applicant, the board shall give public notice of the drawing at least three times within a period of ten days statewide and, in addition, in the appropriate county, if the land is situated in the first, second, and fourth district, each notice to be not oftener than once in two successive days.]~~ Upon completion of the drawing, the award shall be announced within one week, and the lease or patent issued within ninety days after the drawing or when the conditions of the sale are fulfilled.

(c) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once ~~[in each of three successive weeks statewide and, in addition, in the appropriate county if the land is situated in the first, second, and fourth districts;]~~ statewide and once in the county where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general terms the size,

location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.

(d) Exchanges; quitclaim; submerged and reclaimed lands; reservations and easements. Whenever it is proposed to exchange public lands for private land pursuant to section 171-50, quitclaim public land or any interests of the State in private land pursuant to section 171-51, dispose of submerged or reclaimed public land pursuant to subsections (b) and (d) of section 171-53, dispose of a land license by negotiation pursuant to section 171-54, or dispose of reserved rights and easements pursuant to section 171-57, public notice of the disposition shall be given at least once ~~[in each of three successive weeks statewide and, in addition, in the appropriate county if the public land is situated in the first, second, and fourth districts.]~~ statewide and once in the county where the land or other interests being disposed of are located. The notice shall state in general terms the size and location of the public lands proposed to be disposed.

(e) In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

ACT 203

S.B. NO. 1178

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Locum tenens practitioner” means a practitioner:

- (1) Who is licensed in this State and registered under section 329-32 to administer, prescribe, or dispense a controlled substance in the course of professional practice, who temporarily substitutes for another registered practitioner for a period not to exceed sixty days at that other practitioner’s registered place of business; and
- (2) Whose Drug Enforcement Administration controlled substance registration number has not been transferred to the State of Hawaii.

Locum tenens practitioners are not eligible to receive an oral code number as designated by section 328-16(j).”

SECTION 2. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo- alphacetylmethadol, levomethadyl acetate, [also known as] or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl [(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)] (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-[1-(2- hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacylmorphane;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine; and
- (55) Trimeperidine.”

SECTION 3. Section 329-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate[:-], including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Codeine;
- (G) Ethylmorphine;
- (H) Etorphine hydrochloride;
- (I) Hydrocodone;
- (J) Hydromorphone;
- (K) Metopon;
- (L) Morphine;
- (M) Oxycodone;
- (N) Oxymorphone; and
- (O) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium[:-];

(3) Opium poppy and poppy straw[:-]; and

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt of isomer thereof.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;

- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Glutethimide;
- (11) Isomethadone;
- (12) Levo-alphaacetylmethadol (LAAM);
- (13) Levomethorphan;
- (14) Levorphanol;
- (15) Metazocine;
- (16) Methadone;
- (17) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (18) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (19) Oxycodone;
- (20) Pethidine[;] (Meperidine);
- (21) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (22) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (23) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (24) Phenazocine;
- (25) Piminodine;
- (26) Racemethorphan;
- (27) Racemorphan;
- (28) Remifentanyl; and
- ~~[(28)]~~ (29) Sufentanil."

2. By amending subsection (g) to read:

"(g) Hallucinogenic substances[~~, including but not limited to:~~], unless listed in another schedule, shall include Nabilone."

SECTION 4. Section 329-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation [that contains] containing any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
- (2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;
- (3) Any substance that contains any quantity of a derivative of barbituric acid or any salt thereof[;], including the substance butalbital;
- (4) Chlorexadol;
- (5) Ketamine hydrochloride;
- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methypylon;
- (9) Sulfondiethylmethane;

- (10) Sulfonethylmethane;
- (11) Sulfonmethane; and
- (12) Tiletamine/Zolazepam (Telazol)[-] or any salts thereof.”

2. By amending subsection (h) to read:

“(h) Hallucinogenic substances~~[, including but not limited to:]~~, unless listed in another schedule, shall include Dronabinol (synthetic), in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.”

SECTION 5. Section 329-20, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- ~~[(4)]~~ (2) Diethylpropion;
- ~~[(2)]~~ Phentermine;
- (3) Pemoline ~~(including organometallic complexes and chelates thereof);~~
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Phentermine;
- (9) Pemoline (including organometallic complexes and chelates thereof);
- (10) Pipradrol;
- (11) Sibutramine; and
- (12) SPA ((-)-1-dimethylamino- 1,2-diphenylethane.”

2. By amending subsection (g) to read:

“(g) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit [~~(modafinil)~~]; and
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).”

SECTION 6. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

“**§329-61 Substances subject to reporting.** (a) List 1 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department [~~of public safety~~] of all those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine[;] and its salts;
- (3) Phenylacetic acid[;], its esters and salts;
- (4) Ephedrine[;], its salts, optical isomers, and salts of optical isomers;

- (5) Pseudoephedrine[;], its salts, optical isomers, and salts of optical isomers;
- (6) Norpseudoephedrine[;], its salts, optical isomers, and salts of optical isomers;
- (7) Phenylpropanolamine[;], its salts, optical isomers, and salts of optical isomers;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine[;], its salts, optical isomers, and salts of optical isomers;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine[;], its salts, optical isomers, and salts of optical isomers;
- (16) Chloroephedrine;
- (17) Chlorpseudoephedrine;
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine [tartrate;] and its salts;
- (21) Piperidine[;] and its salts;
- (22) N-acetyl anthranilic acid[;], its esters and salts;
- (23) Anthranilic acid[;], its esters and salts;
- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;
- (28) Thionylchloride;
- (29) Ergonovine [maleate;] and its salts;
- (30) 3,4-Methylenedioxyphenyl-2-propanone;
- (31) Benzaldehyde;
- (32) Nitroethane;
- (33) Red phosphorus;
- (34) Iodine crystals;
- ~~(35)~~ Gamma butyrolactone (GBL);]
- (35) Iodine at concentrations greater than 1.5 per cent by weight in a solution or matrix above the threshold of two ounces in a single transaction;
- (36) Gamma butyrolactone (GBL) including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone; and 4-hydroxybutanoic acid lactone with chemical abstract service number 96-48-0; and
- (37) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butyleneglycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethyleneglycol; tetramethylene glycol; and tetramethylene1,4-diol.

(b) List 2 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the following chemicals, or sells, transfers, or otherwise furnishes the chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could

be used in violation of this part by any person in this State, shall report to the department all those transactions of:

- (1) Acetic anhydride;
- (2) Acetone;
- (3) Benzyl chloride;
- (4) Ethyl ether;
- (5) Potassium permanganate;
- (6) 2-Butanone (or methyl ethyl ketone or MEK);
- (7) Toluene;
- (8) Hydrochloric acid;
- (9) Sulfuric acid;
- (10) Methyl isobutyl ketone (MIBK)[-];
- (11) Anhydrous ammonia;
- (12) Hydrogen chloride; and
- (13) Methyl sulfone (MSM, DMS, Dimethyl sulfone or DMSO2).''

SECTION 7. Section 329-65,¹ Hawaii Revised Statutes, is amended to read as follows:

“(a) Any manufacturer, wholesaler, retailer, or other person who does not submit a report as required by section 329-63 or who knowingly submits a report with false or fictitious information shall be fined not more than \$5,000, or imprisoned not more than thirty days, or both.

(b) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating subsection (a), upon a subsequent conviction thereof, shall be fined not more than \$100,000, or imprisoned not more than one year, or both.

(c) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the substances listed in section 329-61 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture any controlled substance shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(d) Any manufacturer, wholesaler, retailer, or other person who possesses any of the substances listed in section 329-61 with the intent to illegally manufacture any controlled substance shall be fined not more than \$100,000, or imprisoned not more than ten years, or both.

(e) Any person who possesses, sells, distributes, purchases for resale, or causes to be sold, distributed, or purchased for resale any ephedrine-containing product with a label that claims or implies that consumption of the product will produce effects such as ecstasy, euphoria, increased sexual sensations, legal “highs”, and other similar effects shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(f) It is unlawful for any person to knowingly or intentionally obtain or attempt to obtain any of the substances listed in section 329-61 or procure or attempt to procure any substances listed in section 329-61:

- (1) By fraud, deceit, misrepresentation, embezzlement, or theft;
- (2) By furnishing fraudulent documentation or information or the concealment of a material fact regarding the use, location, or ultimate user of the substances listed in section 329-61; or
- (3) By the use of a false name, photo identification, general excises tax information, or the giving of a false address.

Any person who violates this section shall be fined not more than \$100,000, or imprisoned not more than five years, or both.’’

SECTION 8. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The information required by this section shall be transmitted: on an electronic device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or pharmacy universal claim form that meets the specifications provided in the rules of the designated state agency. The information to be transmitted under subsection (b) shall include at least the following for each dispensation:

- (1) The patient’s name;
- (2) The patient’s identification number;
- (3) The patient’s date of birth;
- (4) The patient’s address;
- [(4)] (5) The eight-digit national drug code number of the substance dispensed;
- (6) The date the prescription was issued;
- [(5)] (7) The date of dispensation;
- [(6)] (8) The quantity and number of refills authorized;
- [(7)] (9) The practitioner’s Drug Enforcement Administration registration number;
- [(8)] (10) The pharmacy’s National Association of Boards of Pharmacy number and location; and
- [(9)] (11) The practitioner’s practice specialty and subspecialties, as determined by the applicable licensure boards.”

SECTION 9. Statutory material to be repealed is bracketed and stricken; except bracketed material contained within the name of substances listed in section 329-14(b)(1), (7), (11), (12), (34), (35), (42), and (53), Hawaii Revised Statutes, or bracketed material which is also underscored in section 329-14(b)(8), Hawaii Revised Statutes, in section 3¹ of this Act is not to be repealed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. So in original.

ACT 204

S.B. NO. 1209

A Bill for an Act Relating to Claims Against the University of Hawaii and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following sums of money are appropriated out of the University of Hawaii commercial enterprises revolving fund for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the University of Hawaii or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE UNIVERSITY OF HAWAII AND SETTLEMENTS OF CLAIMS:	AMOUNT
Matthew Fetui	\$25,000.00
Oskar Zaborsky v. University of Hawaii, et al.	\$150,000.00 Settlement
Deborah Reid v. University of Hawaii, et al.	\$11,666.00 Settlement
MISCELLANEOUS CLAIMS:	
Estimated expenditures for waste minimization and pollution prevention as required by the Department of Health and the Environmental Protection Agency for improper storage and disposal of hazardous materials	\$400,000.00
GRAND TOTAL:	<hr/> \$586,666.00

SECTION 2. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the University of Hawaii, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

SECTION 3. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 2002, shall lapse into the general fund.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved May 31, 2001.)

ACT 205

S.B. NO. 1379

A Bill for an Act Relating to Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are hereby appropriated or authorized from the sources and funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund all collective bargaining cost items in the arbitration award for collective bargaining unit 5:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$40,630,910	\$71,167,338
Federal	\$ 7,676	\$ 14,979

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance in each respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are hereby appropriated or authorized from the sources and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the department of education who are excluded from collective bargaining:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$912,688	\$2,614,620

SECTION 4. Funds appropriated or authorized by this Part shall be allotted by the director of finance in each respective fiscal year for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 2002, and June 30, 2003, of the respective fiscal years shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2001.

(Approved May 31, 2001.)

ACT 206

H.B. NO. 407

A Bill for an Act Relating to the General Excise Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in a number of cases over the years, contractors from the United States mainland who are working on federal construction projects in Hawaii have failed to pay general excise taxes, even, in some cases, when their contracts with the federal government specifically requires them to pay applicable state and local taxes. The legislature further finds that the department of taxation has joined forces with the local business and labor community to develop various strategies to collect general excise taxes.

The purpose of this Act is to ensure that contractors working on federal construction projects in Hawaii pay state general excise taxes by:

- (1) Requiring the department of taxation to continue working with the federal government, local businesses, and the labor community to devise a system to enforce the collection of these taxes;
- (2) Requesting the assistance of the federal government;

- (3) Authorizing the director of taxation to contract with bonded collection agencies, licensed attorneys, accountants, auditors, or other persons to pursue and collect claims for delinquent general excise taxes or other collection provisions under chapter 231, Hawaii Revised Statutes; and
- (4) Requiring a report to the legislature on the need for any proposed legislation.

SECTION 2. The director of taxation shall develop a system to determine when contractors from the United States mainland are present in Hawaii to work on federal projects, including the starting and anticipated completion dates for these contracts, to enforce the laws relating to the collection of general excise taxes on these contractors that may be required under chapter 237, Hawaii Revised Statutes.

The United States government is requested to provide the information necessary to ascertain the names and work dates of United States mainland contractors working on federal projects. The director of taxation shall work with the United States government to establish this information to enforce and collect taxes owed to the State.

The director of taxation may contract with bonded collection agencies, licensed attorneys, accountants, auditors, or other persons to pursue and collect claims of the State when the mainland contractor, who owes delinquent general excise taxes or is subject to other provisions under chapter 231, Hawaii Revised Statutes, has moved back to the United States mainland.

(d) The director of taxation may adopt rules pursuant to chapter 91 to implement this section.

SECTION 3. The director of taxation shall report its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2002.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 207

H.B. NO. 644

A Bill for an Act Relating to Prescription Drugs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328C-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Institutional facility” means a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Mental retardation center;
- (10) Penal institution; or

- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice.”

SECTION 2. Section 328C-2, Hawaii Revised Statutes, is amended to read as follows:

“[§328C-2] Exceptions to liability. (a) A charitable, religious, or non-profit organization which in good faith receives pharmaceuticals or health care supplies, apparently fit for human consumption or external use, and distributes them to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the use of the pharmaceuticals or health care supplies donated to needy persons unless an injury or illness results to those needy persons as a result of that organization’s gross negligence or wanton acts or omissions.

(b) Any pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner that in good faith provides pharmaceuticals, including previously dispensed prescription drugs, and health care supplies to needy persons without remuneration or expectation of remuneration, shall be exempt from civil liability for injuries and damages resulting from their acts or omissions in providing pharmaceuticals and health care supplies, except for gross negligence, or wanton acts or omissions on the part of the pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner.

(c) Any donated, previously dispensed, prescription drug:

- (1) Shall be in its dispensed, unopened, tamper-evident single user unit;
- (2) Shall have remained at all times in the control of a person trained and knowledgeable in the storage and administration of drugs in institutional facilities;
- (3) Shall not have been adulterated, misbranded, or stored under conditions contrary to standards established by the United States Pharmacopoeia or the product manufacturer; and
- (4) Shall be used before the expiration date on the unit.

(b) (d) This section shall not relieve any organization from any other duty imposed upon it by law for the inspection of donated pharmaceuticals or health care supplies or for any provisions regarding the handling of those products, ~~[nøf]~~ or relieve any health care provider from liability arising out of the prescription of such pharmaceuticals or health care supplies.

(e) For purposes of this section:

“Needy person” means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies as determined by a practitioner at a Hawaii qualified health center established under section 346-41.5, to be in need of service.

“Pharmaceuticals and health care supplies” means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item that is customarily fit for human consumption or external use, before the expiration date stamped on the product, if any.

“Pharmaceutical company” means any company that manufactures pharmaceuticals and health care supplies.

“Pharmacy” is as defined in chapter 461.”

SECTION 3. Section 461-11, Hawaii Revised Statutes, is amended to read as follows:

“§461-11 Duties of registered pharmacist. [(a)] Every registered pharmacist in charge of a pharmacy shall comply with all laws and rules. The pharmacist shall be responsible for the management of the pharmacy[-Every] and every activity thereof [that] which is subject to this chapter [and the rules adopted to implement this chapter] shall be under the pharmacist’s complete control.

[(b)] All registered pharmacists shall notify the board of changes of business address within ten days.

[(c)] Prescription drugs previously dispensed or distributed by a pharmacist may be returned to and redispensed or redistributed by the pharmacist if the prescription drug:

- (1) Is in its dispensed, unopened, tamper-evident single-user unit;
- (2) Has remained at all times in control of a person trained and knowledgeable in the storage and administration of drugs in institutional facilities or supervised living groups using the services of a consultant pharmacist;
- (3) Has not been adulterated or misbranded and has been stored under conditions meeting the United States pharmacopoeia standards;
- (4) Is returned and redispensed or redistributed before the expiration date on the unit; and
- (5) Does not include any controlled substance under chapter 329.]”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 208

H.B. NO. 861

A Bill for an Act Relating to the Operations and Maintenance of Certain Agriculture-Related Infrastructure on Kauai.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the imminent termination of sugarcane cultivation by Amfac Sugar-Kauai will likely result in the loss of hundreds of jobs, causing great economic hardship and uncertainty for many Kauai families and businesses.

As of late 2000, five agribusinesses have received temporary permits from the board of land and natural resources to use about five thousand acres in the Kekaha area for truck crops, seed corn, aquaculture, fruit orchards, as well as sugarcane. In the Hanamaulu-Wailua area, there will be several thousand additional acres available for diversified agricultural activities. These agricultural lands possess qualities that are suited for cultivating a wide variety of crops.

These areas are served by four extensive irrigation supply, storage, and distribution systems. Upon closure, continued maintenance of these systems is critical for the transition to diversified agriculture. In addition, the Kekaha area also has hydroelectric generators, a complex electrical distribution network, many miles of drainage canals, and two groundwater pumping stations that prevent the makai

plain from flooding. These facilities must be operated and maintained on a continuous basis, whether the lands are in sugarcane or other crop cultivation, or fallow.

The purpose of this Act is to authorize the agribusiness development corporation to provide for uninterrupted operation and maintenance of the infrastructure systems serving the areas encompassing the Kekaha and Lihue plantations for a period of one year thereby facilitating the development of diversified agriculture on these lands.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be deposited into the Hawaii agricultural development revolving fund to carry out the purposes of this Act.

SECTION 3. There is appropriated out of the Hawaii agricultural development revolving fund the sum of \$2,300,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$2,300,000 or so much thereof as may be necessary for fiscal year 2002-2003 to allow the agribusiness development corporation to carry out the purposes of this Act.

SECTION 3.¹ The sums appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

Note

1. So in original.

ACT 209

H.B. NO. 946

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-1182, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1182 New century charter schools; establishment. (a) Up to a total of twenty-five schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school pursuant to ~~[section 302A-1183;]~~ subsection (c);
- (2) An existing public school pursuant to subsection (b); or
- (3) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities pursuant to ~~[section 302A-1183;]~~ subsection (c).

(b) Any public school or schools may submit a letter of intent to the board to form a new century charter school ~~[by establishing a]~~, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d); provided that:

- (1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:

- ~~[(4)]~~ (A) Principals;

- [(2)] (B) Instructional staff members selected by the school instructional staff;
- [(3)] (C) Support staff selected by the support staff of the school;
- [(4)] (D) Parents of students attending the school selected by the parents of the school;
- [(5)] (E) Student body representatives selected by the students of the school; and
- [(6)] (F) The community at-large[-];¹
and

[(c)] The local school board shall formulate and develop a detailed implementation plan, which shall include but not be limited to the following:

- (1) A description of the administrative and educational framework, and which provides for the basic protection of employees and their reasonable academic freedoms;
- (2) A plan for identifying, recruiting, and selecting students to make certain that student participation is not exclusive, elitist, or segregationist;
- (3) A plan for a comprehensive assessment and accountability system that meets or exceeds the established state educational content and performance standards as well as any other specific student outcomes to be achieved, and making this plan accountable to the general public;
- (4) The curriculum, instructional framework, and assessment mechanisms to be used to achieve student outcomes;
- (5) A plan to hold the school, its faculty, and staff (collectively and individually) accountable in at least an equivalent manner as are other public schools throughout the State;
- (6) A governance structure of the school;
- (7) A facilities management plan that is consistent with the state facilities plan; provided that if the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; provided further that the final determination of use shall be under the discretion of the board; and
- (8) A system of financial accountability that includes annual financial and program audits.]
- (2) The detailed implementation plan shall be approved by sixty per cent of the school's existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units. [Once approved, the detailed implementation plan shall be submitted to the board for review.]

[(d)] The board shall have sixty days to review the completed implementation plan for the proposed new century charter school to assure its compliance with subsection (c) and section 302A-1184. Unless the board finds that the plan conflicts with subsection (c) or section 302A-1184, the governor, the superintendent, and the board shall issue a charter designating the proposed new century charter school as a new century charter school within thirty days, and the proposed implementation plan shall be converted to a written performance contract between the school and the board. If, within thirty days after the submission of the plan, the board finds a conflict with subsection (c) or section 302A-1184, it shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict.]

(c) As an alternative to subsection (b), any community, group of teachers, group of teachers and administrators, entity recognized as a nonprofit organization

under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any program within an existing school may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d).

(d) The local school board shall, with the support and guidance of the superintendent, formulate and develop a detailed implementation plan that meets the requirements of this subsection and of section 302A-1184. The plan shall include but not be limited to the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protect the rights of employees;
- (2) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
- (3) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (4) A comprehensive plan for the assessment of student, administrative support, and teaching personnel performance, that:
 - (A) Recognizes the interests of the general public;
 - (B) Incorporates or exceeds state educational content and performance standards;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
 - (D) Provides for program audits and annual financial audits.
- (5) The governance structure of the school;
- (6) A plan for any necessary design, construction, renovation, and management of facilities that is consistent with the state facilities plan; provided that if the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; provided further that the final determination of use shall fall within the board's discretion.

(e) The detailed implementation plan shall be submitted to the new century charter school review panel, which shall be composed of seven members as follows:

- (1) Four of the members shall be board of education members or their designees appointed by the chairperson of the board of education;
- (2) Two of the members shall be members of the new century charter school community approved by the chairperson of the board of education from a list submitted by existing new century charter schools; and
- (3) One member shall be the superintendent of education or the superintendent's designee.

Panel review procedures shall be as provided in this section. The board may adopt rules pursuant to chapter 91 to further guide the panel's review process.

(f) The new century charter school review panel shall have sixty working days to review the completed implementation plan for a proposed new century charter school to ensure that it meets the requirements of subsection (d) and section 302A-1184. Within forty-five working days, the panel shall issue a report of its preliminary findings to the board of education and the local school board. If the panel subsequently determines that the implementation plan:

- (1) Meets the requirements of subsection (d) and section 302A-1184, the panel shall by the sixtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. Upon receipt of the panel's recommendation, the board

shall issue a charter, and the implementation plan shall be converted to a written performance contract between the school and the board; or

- (2) Fails to meet the requirements of subsection (d) or section 302A-1184, the panel:

(A) Shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict; and

(B) May submit a recommendation to the board to issue a provisional approval for a charter if the panel determines that the applicant may reasonably be expected to expeditiously resolve any remaining conflict or conflicts impeding the issuance of a charter. The provisional approval shall be effective for one year. The board may extend the provisional approval beyond a period of one year. If a charter is subsequently issued, the amended implementation plan shall be converted to a written performance contract between the school and the board.

(g) An amended implementation plan shall be submitted within thirty working days of notification pursuant to subsection (f)(2)(A). The board shall deny the issuance of a charter if the local school board does not submit an amended implementation plan within the thirty working day period. The panel shall have thirty working days to review the amended implementation plan. If the amended implementation plan:

(1) Meets the requirements of subsection (d) and section 302A-1184, the panel shall by the thirtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. If a charter is issued, the amended implementation plan shall be converted to a written performance contract between the school and the board; or

(2) Fails to resolve any conflicts to the panel's satisfaction or involves new and different issues of conflict with subsection (d) or section 302A-1184, the panel shall deny issuance of a charter.

(h) A local school board may file an appeal of the denial of an application for a charter with the panel. Upon filing an appeal, the panel shall forward the implementation plan and appropriate documentation of the appeal to the board of education. Within thirty working days, the board of education shall issue a report of its findings and final determination to the local school board. If the implementation plan is approved, the board of education shall issue a charter and the implementation plan shall be converted to a written performance contract between the school and the board of education.

[(e)] (i) The new century charter schools shall not charge tuition. The State shall afford the local school board of any new century charter school the same protections as the State affords to the board."

SECTION 2. Section 302A-1185, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) New century charter schools shall receive an allocation of state general funds based upon the operational and educational funding requirements of the schools; provided that:

(1) Beginning in fiscal year 1999-2000, and every year thereafter, the auditor shall determine the appropriate allocation based on the total department general fund appropriation and per pupil expenditure for the previous fiscal year; provided that the per pupil allocation to any new century charter school shall not exceed the department's average per pupil expenditure based upon the inclusion of similar cost items, in

the previous fiscal year; and provided further that in setting the allocation, the auditor shall explicitly consider the advice of the superintendent and representatives of local school boards and indicate in the final determination the manner in which that advice was accommodated;

- (2) Small schools with [less] fewer than one hundred twenty students [shall] may be given a state subsidy or small school allotment, as determined by the department, to augment the per pupil allocation given; provided that if additional federal grant moneys are received, the auditor shall determine the appropriate portion of the federal grant moneys to be used to offset the small school allotment; provided further that the federal grant moneys shall not include federal impact aid;
- (3) The department may provide a limited start-up and planning grant formulated by the auditor to a charter school upon the issuance of its charter;
- (4) The auditor shall take into consideration any changes to the department's budget made by the legislature or the governor and any applicable collective bargaining negotiated amounts;
- (5) The allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for students in these programs; provided that any increment to the per pupil allocation made in this paragraph shall not exceed the increment available to all other public schools; and
- (6) The auditor shall develop a methodology for allocating funds that can be applied to alternative forms of public schools, including but not limited to new century charter schools.

(b) All federal ~~[and other]~~ financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school's allocation.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards."

SECTION 3. Section 302A-1186, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1186 New century charter schools; [self-evaluation.]
accountability. (a) Every new century charter school shall conduct self-evaluations annually. The self-evaluation process shall include but not be limited to:

- (1) The identification and adoption of benchmarks to measure and evaluate administrative and instructional programs as provided in this section;

- (2) The identification of any administrative and legal barriers to meeting the benchmarks, as adopted, and recommendations for improvements and modifications to address the barriers;
- (3) The impact of any changes made upon the students of the new century charter school; and
- (4) A profile of the charter school's enrollment and community it serves.

Every new century charter school shall submit a report of its self-evaluation to the board within sixty working² days after the completion of the school year; provided that the department shall have thirty working² days to respond to any recommendation regarding improvements and modifications that would directly impact the department.

(b) The board shall initiate an independent evaluation of each new century charter school [~~four years~~] annually for the first two years after its establishment and every four years thereafter to assure compliance with statewide student content and performance standards and fiscal accountability; provided that each new century charter school established prior to July 1, 1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have [~~two years~~] one year to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then deny the continuation of the new century charter school.

(c) The board of education may adopt guidelines to supplement accountability measures incorporated in the written performance contracts required under section 302A-1182. The board of education may adopt guidelines under which new century charter schools shall be reviewed on an annual basis by the board for the first two years upon their formation under section 302A-1182. The review guidelines may include:

- (1) Minimum school size;
- (2) Assurance that each school will be able to account for the funds allocated;
- (3) Assurance that each school will be held accountable for student performance;
- (4) Assurance that each school will meet legal standards for the expenditure of state and federal funds; and
- (5) Assurance that each school will be in compliance with applicable state and federal laws.³

SECTION 4. Section 302A-1183, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 302A-1189, Hawaii Revised Statutes, is repealed.

SECTION 6. Any other law to the contrary notwithstanding, in reviewing implementation plans for new century charter schools, the new century charter school review panel and board of education shall give priority to and review first any plans submitted by publicly funded schools or programs of publicly funded schools which were operational prior to the effective date of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken.⁴ New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

Notes

1. Semicolon should be underscored.
2. "Working" should be underscored.
3. Subsection (c) is new and should be underscored.
4. Edited pursuant to HRS §23G-16.5.

ACT 210

H.B. NO. 1685

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the geographical nature of Hawaii is unique in that it is composed of separate and distinct islands, and therefore travel among these islands is dependent solely on the availability of commercial modes of transportation, primarily air travel.

The legislature further finds that the interisland transportation needs of Hawaii's residents, as well as tourists who wish to experience the beauty of each island, are currently served by commercial air carriers that provide frequent, affordable, and a necessary means of intrastate transportation to our residents and tourists alike, thus differentiating these air carriers by the necessary service they provide.

The legislature finds that Hawaii is currently served by two major interisland air carriers that have made and will continue to make capital investments to assure that our residents continue to be best served in their interisland transportation needs. In addition, the service provided by these two interisland carriers also provides a necessary service to Hawaii's tourists and supports the tourism market on each major island.

The purpose of this Act is to provide a general excise tax exemption for any amounts received as rent for the rental or leasing of aircraft or aircraft engines used for interisland air transportation of passengers and goods and to clarify the existing use tax exemption.

SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

"§237-24.3 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
 - (A) Intoxicating liquor as the term "liquor" is defined in chapter 244D;
 - (B) Cigarettes and tobacco products as defined in chapter 245; and
 - (C) Agricultural, meat, or fish products grown, raised, or caught in Hawaii, to any person or common carrier in interstate or foreign

- commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper's vessels or airplanes;
- (3) Amounts received by the manager or board of directors of:
 - (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
 - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 415B or any predecessor thereto and existing pursuant to covenants running with the land,
 in reimbursement of sums paid for common expenses;
 - (4) Amounts received or accrued from:
 - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
 - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
 - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
 - (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
 - (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
 - (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
 - (A) "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
 - (B) "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to re-

place a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
 - (A) A labor organization; or
 - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended; [and]

- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes[-]; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102."

SECTION 3. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of "use" to read as follows:

""Use" (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property, services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, and shall include the exercise of any right or power over tangible or intangible personal property incident to the ownership of that property, but the term "use" shall not include:

- (1) Temporary use of property, not of a perishable or quickly consumable nature, where the property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State. For example, without limiting the generality of the foregoing language:
 - (A) In the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract;

- (B) In the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; and
- (C) In the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor's departure from the State;
- (2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift;
- (3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial;
- (4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels;
- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who:
 - (A) Acquired them in another state, territory, district, or country;
 - (B) At the time of the acquisition was a bona fide resident of another state, territory, district, or country;
 - (C) Acquired the property for use outside the State; and
 - (D) Made actual and substantial use thereof outside this State;

provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial;
- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods~~;~~ or the acquisition or importation of any such aircraft or aircraft engines by any lessee or renter engaged in interstate air transportation. For purposes of this paragraph, "leasing" includes all forms of lease, regardless of whether the lease is an operating lease or financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102;
- (7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269;
- (8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-24.9;
- (9) The use of services or contracting imported for resale where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a);
- (10) The use of contracting imported or purchased by a contractor as defined in section 237-6 who is:
 - (A) Licensed under chapter 237;
 - (B) Engaged in business as a contractor; and
 - (C) Subject to the tax imposed under section 238-2.3; and
- (11) The use of property, services, or contracting imported by foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

ACT 211

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

ACT 211

S.B. NO. 28

A Bill for an Act Relating to Dislocated Workers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 394B-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[§394B-9]~~ **Notification.** An employer in a covered establishment shall provide to each employee and the director written notification of a closing, partial closing, or relocation at least ~~[forty-five]~~ sixty days prior to its occurrence.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 212

S.B. NO. 67

A Bill for an Act Relating to Domestic Abuse Protective Orders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[§586-9]~~ **Modification of order.** Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection. The court may deny, without hearing, a motion to dismiss or to modify the terms of an existing order for protection if the motion, on its face, does not allege facts sufficient to establish a material change in the circumstances of the parties since the issuance or last modification of the order.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 213

S.B. NO. 221

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that agriculture in Hawaii is continuing its transition from primarily sugar and pineapple to a diversified, multicrop industry. While some success has been achieved, current efforts must be intensified to accomplish the many tasks that lie ahead.

To address this issue, the legislature approved Act 117, Session Laws of Hawaii (SLH) 1999, by altering the requirements for the agribusiness development corporation's board of directors to include knowledge and experience in banking, real estate, and promotion. Act 117 also amended Act 176, SLH 1998, replacing the current membership of the corporation's board of directors with the board of agriculture on July 1, 2001, instead of July 1, 1999.

The legislature further finds that five new members were appointed to the board of directors of the agribusiness development corporation in September 1999. Two years is an insufficient amount of time to implement policies under this new leadership and make a successful transition to the board of agriculture.

The purpose of this Act is to support the continued redevelopment of Hawaii's \$2,900,000,000 agricultural industry by extending the composition of the current agribusiness development corporation's board of directors for an additional four years.

SECTION 2. Act 176, Session Laws of Hawaii 1998, as amended by Act 117, Session Laws of Hawaii 1999, is amended by amending section 19 to read as follows:

“SECTION 19. This Act shall take effect on July 1, 1998; provided that section 5 shall take effect on [~~July 1, 2001.~~] July 1, 2005.”

SECTION 3. Act 117, Session Laws of Hawaii 1999, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on June 30, 1999; provided that:

- (1) Section 1 shall be repealed on [~~June 30, 2001;~~ and] June 30, 2005; and
- (2) Section 4 shall take effect on July 1, 1999.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2001.

(Approved June 2, 2001.)

ACT 214

S.B. NO. 684

A Bill for an Act Relating to Fees of the Sheriff's Office.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to raise the fees of the sheriff's office to a level comparable to a national standard.

SECTION 2. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Sheriff’s or police officer’s fees:

- (1) For serving any criminal summons, warrant, attachment, or other criminal process, [~~\$20~~] \$30 effective July 1, [1990.] 2001.
- (2) For serving any civil summons, warrant, attachment, or other civil process, [~~\$15~~] \$25 effective July 1, [1990.] 2001.
- (3) For every copy of an attachment and inventory of the property attached, served upon the defendant, [~~\$1.50~~] \$2.
- (4) For serving any execution, 12 cents for every \$1 collected up to [~~\$50~~] \$500, and 7 cents for every \$1 over [~~\$50~~] \$500.
- (5) [~~For serving subpoena or garnishee summons, \$10.~~] For serving: subpoena, \$25; and subpoena duces tecum or garnishee summons, \$15 effective July 1, 2001.
- (6) For every mile of travel, more than one, in serving any process, [35] 40 cents; provided that (A) no allowance shall be made where the serving officer uses a conveyance furnished the serving officer by the State, or any political or municipal subdivision thereof; (B) where the serving officer serves more than one person in the course of one trip, the serving officer shall not charge, in the aggregate for all services, more than the mileage for the entire trip; and (C) as far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to a deputy, the chief of police or other serving officer upon the island of service, who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the officer actually making the service or to the officer’s superior.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff or police officer performing the service.”

SECTION 3. Section 607-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all necessary travel in making the service, per mile for every mile more than one...[35] 40 cents provided that:

- (1) No allowance shall be made where the serving officer uses a conveyance furnished the serving officer by the State, or any political or municipal subdivision thereof;
- (2) Where the serving officer serves more than one person in the course of one trip, the serving officer shall not charge, in the aggregate for all services more than the mileage for the entire trip; and
- (3) As far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to a deputy, the chief of police, or other serving officer upon the island of service who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the officer actually making the service or to the officer’s superior.

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith [~~\$20~~] \$30 effective July 1, [1990.] 2001.

For serving civil summons or any other civil process, except a subpoena or a garnishee summons, for each person served therewith [~~\$15~~] \$25 effective July 1, [~~1990~~.] 2001.

For serving: subpoena, for each person, \$25; and subpoena duces tecum or garnishee summons, for each person [~~\$10~~.] \$15 effective July 1, 2001.

For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State .. [~~\$2~~.] \$5 effective July 1, 2001.

For serving any execution or other process for the collection of money, for every dollar collected up to [~~\$500~~] \$1,000 5 cents.

And for every dollar over [~~\$500~~] \$1,000 2-1/2 cents.

All fees paid to any printer for publishing an advertisement of the sale of any property.

For every bill of sale [~~\$1~~.] \$2.

For executing and acknowledging a deed pursuant to a sale of real estate to be paid by the grantee in the deed [~~\$5~~.] \$8.

For drawing any bond required by law [~~\$1~~.] \$2.

For serving writ of possession or restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to order of court ... [~~\$1~~.] \$25.

Together with all necessary expenses incurred by the officer serving the writ, incident to the eviction.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

The fees for service of executions, attachments, and collection of judgments, together with all costs incurred after judgment rendered, not included in the judgment, in all courts of the State, shall be collected in addition to the sum directed to be levied and collected in the writ.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff or police officer performing the service."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

ACT 215

S.B. NO. 981

A Bill for an Act Relating to the Board of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a recent interpretation in a circuit court ruling has drawn into question the meaning of the term "simple majority" for decisions by the board of land and natural resources on permit and site plan approvals in the conservation district under section 183C-6, Hawaii Revised Statutes (HRS). The ruling interpreted the "simple majority" in section 171-5, HRS, as four of the board's six members, not the generally accepted majority of the board members present at a meeting when a decision is rendered.

The intent of this measure is to:

- (1) Increase the number of members on the board from six to seven, and at-large membership from two to three; and
- (2) Clarify that a simple majority of the members present at a meeting and qualified to vote shall be required for any decision pursuant to section 183C-6(b), HRS.

SECTION 2. Section 171-4, Hawaii Revised Statutes, is amended to read as follows:

“§171-4 Board of land and natural resources; terms and qualifications of members of the board; organization; expenses. The board of land and natural resources shall be composed of ~~[six]~~ seven members, one from each land district and ~~[two]~~ three at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 26-34. The term and removal of a member of the board and the filling of a vacancy on the board shall also be as provided in section 26-34. There shall be not more than three members on the board from the same political party.

Each member shall disclose and file with the board a list of all transactions with the department of land and natural resources in which the member has a direct interest. The member shall also disclose all transactions with the department involving any corporation, association, partnership, or joint venture in which the member is an officer, partner, or employee. Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the matter.

The governor shall select a chairperson of the board from among its members. The chairperson shall call and preside at meetings and may appoint a member of the board as secretary. The members of the board shall choose one of their number to act as chairperson during the absence or disability of the chairperson.

The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.”

SECTION 3. Section 171-5, Hawaii Revised Statutes, is amended to read as follows:

“§171-5 Meetings, regular, special; quorum. Regular meetings of the board of land and natural resources shall be held not less than once a month and the board shall provide in its rules and regulations the number and dates for the regular meetings. Special meetings may be called by the chairperson at any time by giving notice thereof to each member present in the State at least five days prior to the date of the special meeting; provided that notice shall not be required if all members present in the State agree and sign a written waiver of the notice.

However, no final action involving disposition of public lands may be had at such special meeting.

Any action taken by the board shall be by a simple majority of the members of the board~~[-];~~ provided that a simple majority of the members present at a meeting and qualified to vote shall be required to allow any decision pursuant to section 183C-6(b). Four members of the board shall constitute a quorum to do business. The board shall keep accurate records and minutes of all meetings, special and regular, and they shall be public records. Copies of portions of the agenda relating to dispositions of land shall be made available to the public in the land office of each district at least three days before the meeting at which the matter will be discussed or voted upon.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved June 2, 2001.)

ACT 216

S.B. NO. 1068

A Bill for an Act Relating to Producer Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform Hawaii's licensing laws with the requirements of the Financial Services Modernization Act of 1999 (more commonly known as the Gramm-Leach-Bliley Act ("GLBA"), P.L. 106-102). The GLBA establishes November 12, 2002, as the date when a majority of the states must have producer licensing laws, which are either uniform or reciprocal to each other, in place. Failure to accomplish this by a majority of the states would trigger the creation and implementation of the National Association of Registered Agents and Brokers ("NARAB") licensing authority. The NARAB would remove direct agent and broker licensing oversight from the states and place it under the federally created NARAB, until NARAB is dissolved by Congress.

This bill adopts the National Association of Insurance Commissioners ("NAIC") Producer Licensing Model Act that was created and approved by that organization in response to the GLBA mandates. This Act simplifies and organizes statutory language to improve efficiency and reduce costs associated with issuing and renewing insurance licenses.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

"CHAPTER 431 ARTICLE PRODUCER LICENSING

§431: -101 Scope. This article governs qualifications and procedures for the licensing of insurance producers. It simplifies and organizes statutory language to improve efficiency, to permit the use of new technology, and to reduce costs associated with issuing and renewing insurance licenses.

This article does not apply to excess and surplus lines agents and brokers licensed through article 8, except as provided in section 431: -108 and section 431: -116 of this article.

§431: -102 Definitions. As used in this article, the following definitions apply:

"Approved continuing education course" means a course approved by the commissioner following receipt of recommendations from insurance professionals.

"Approved course provider" means an organization or person that has been approved by the commissioner.

"Business entity" means an association, corporation, individual, limited liability company, limited liability partnership, partnership, person, or other legal entity.

“Commissioner” means the insurance commissioner.

“Credit hour” means the value assigned to an hour of instruction in an approved continuing education course.

“Home state” means the District of Columbia or any state or territory of the United States in which an insurance producer maintains the producer’s principal place of residence or principal place of business and is licensed to act as an insurance producer.

“Inactive” means that the authority of a license issued by the commissioner is not in effect.

“Individual” means a natural person or a business entity.

“Insurance” is defined in section 431:1-201.

“Insurance producer” or “producer” means a person required to be licensed under the laws of this State to sell, solicit, or negotiate insurance.

“Insurer” is defined in section 431:1-202.

“License” means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

“Licensee” means any type of insurance producer or producer.

“Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (“gap”) insurance, and any other form of insurance offered in connection with an extension of credit, that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line of credit insurance.

“Limited line credit insurance producer” means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

“Limited lines insurance” means those lines of insurance defined in section 431: -108(e) or any other line of insurance coverage to individuals through a master, corporate, group, or individual policy.

“Limited lines producer” means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

“NAIC” means the National Association of Insurance Commissioners.

“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract; provided that the person engaged in the act either sells insurance or obtains insurance from insurers for producers.

“Person” means a natural person or a business entity.

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Terminate” means the cancellation of the relationship between the insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

“Uniform business entity application” means the current version of NAIC’s uniform business entity application for resident and nonresident business entities.

“Uniform application” means the current version of NAIC’s uniform application for resident and nonresident producer licensing.

§431: -103 License required. A person shall not sell, solicit, or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

§431: -104 Exceptions to licensing. (a) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(b) A license as an insurance producer shall not be required of the following:

- (1) A officer or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission or remuneration on policies written or sold to insure risks residing, located, or to be performed in this State and:
 - (A) The officer, director, or employee’s activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance;
 - (B) The officer, director, or employee’s functions relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, for the purpose of enrolling individuals under such plans, issuing certificates under plans, or otherwise assists in administering the plans, performs administrative services related to mass marketed property and casualty insurance, or where no commission is paid to the person for the service;
- (3) An employer or association or its officers, directors, employees, or the trustee of any employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, so long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
- (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision or the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;
- (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media, whose distribution is not limited to residents of this State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;
- (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty

risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

- (7) A salaried, full-time employee who counsels or advises the person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive commissions.

§431: -105 Insurance producer license examination. (a) A resident applicant applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 431: -109. The examination shall test the knowledge of the applicant concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this State. Examinations required by this section shall be developed and conducted under rules adopted by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section 431:7-701. The fees collected shall be nonrefundable.

(c) Each person applying for an examination shall remit a fee as set forth in section 431:7-101. The fee shall be nonrefundable.

(d) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

§431: -106 Application for license. (a) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431: -112;
- (3) Has paid the applicable fee set forth in section 431:7-101; and
- (4) Has successfully passed the applicable examination for each line of authority for which the applicant has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the applicable fee set forth in chapter 431 or 432; and
- (2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this State.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each person whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

§431: -107 License. (a) Except as provided in section 431: -112, a person who has met the requirements of sections 431: -105 and 431: -106 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

- (1) Life insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income.
- (2) Accident and health or sickness insurance coverage for sickness, bodily injury, or accidental death and benefits for disability income.
- (3) Property insurance coverage for the direct or consequential loss or damage to property of every kind.
- (4) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
- (5) Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities.
- (6) Credit limited line credit insurance.
- (7) Any other line of insurance permitted under state law or rule.

(b) Except as provided in section 431: -112, an insurance producer license shall remain in effect so long as the fee set forth in section 431:7-101 is paid and the educational requirements for resident individual producers are timely met.

(c) An insurance producer who allows the producer's license to lapse may, within twelve months from the due date of the renewal fee, reinstate that license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or an extenuating circumstance as determined by the commissioner may request a waiver of those procedures. The producer also may request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(e) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

(f) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty pursuant to section 431:2-203.

(g) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing as agreed upon by the commissioner and the nongovernmental entity.

§431: -108 Nonresident licensing. (a) Except as provided in section 431: -112, a nonresident applicant shall receive a nonresident producer license if:

- (1) The applicant is currently licensing as a resident and is in good standing in the applicant's home state;
- (2) The applicant has submitted the proper request for licensure and has paid the fees required by section 431:7-101;
- (3) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (4) The applicant's home state awards a non-resident producer license to a resident of this State on the same basis.

(b) The commissioner may verify the producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) A nonresident producer who moves from one state to another state or a resident producer who moves from this State to another state shall file a change of address with the commissioner and shall provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application shall be required. Failure to timely inform the commissioner of a change in address shall result in a penalty pursuant to section 431:2-203.

(d) Notwithstanding any other provision of this article, an applicant licensed as a surplus lines producer in the applicant's home state shall receive a nonresident surplus lines producer license if the applicant complies with subsection (a). Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of article 8.

(e) Notwithstanding any other provision of this article, an applicant licensed as a limited line credit insurance producer or other type of limited lines producer in the person's home state shall receive a nonresident limited lines producer license, pursuant to subsection (a), granting the same scope of authority as granted under the license issued by the producer's home state. Limited lines insurance authority is any authority granted by the home state, that restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 431: -107(a)(1) through (5).

§431: -109 Exemption from examination. (a) An individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was licensed in good standing in that state, or the state's producer database records, maintained by the NAIC, its affiliates, or its subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) A person licensed as an insurance producer in another state who moves to this State shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 431: -106. No prelicensing educational component or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule.

§431: -110 Assumed names. An insurance producer doing business under any name other than the producer's legal name shall be required to notify the commissioner prior to using the assumed name.

§431: -111 Temporary licensing. (a) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

- (1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned or controlled by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

- (2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;
- (3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or
- (4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this temporary license.

(b) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee. The commissioner may impose other similar requirements designed to protect insureds and the public. The commissioner may by order suspend or revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner, the personal representative, or the person controlling the business disposes of the business.

§431: -112 License denial, nonrenewal, suspension, or revocation. (a)

The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state's commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name to an application or to any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes.

(b) In the event that the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for

that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within twenty days of receipt of the written demand and shall be held pursuant to chapter 91.

(c) The license of a business entity may be sanctioned pursuant to subsection (a) if the commissioner finds, after hearing, that any other licensee of the business entity has engaged in misconduct under subsection (a) that was known or should have been known by one or more of the entity's partners, officers, or managers acting on behalf of the entity and the violation was neither reported to the commissioner by the entity nor corrective action taken by the entity.

(d) In addition to or in lieu of any applicable sanction under subsection (a), a licensee may, after hearing, be subject to a civil fine according to article 2.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article, chapter 431, chapter 432, or chapter 432D, against any person who is under investigation for or charged with a violation of this article, chapter 431, chapter 432, or chapter 432D, even if that person's license or registration has been surrendered or has lapsed by operation of law.

§431: -113 Commissions. (a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if that person was required to be licensed under this article at the time of the sale, solicitation, or negotiation and was so licensed.

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerage fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this State, unless the payment would violate section 431:13-103.

§431: -114 Appointments. (a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted with an insurance producer so appointed.

(b) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing with the commissioner of a single appointment notice.

(c) Upon receipt of the notice of appointment and within a reasonable time not to exceed thirty days, the commissioner shall verify that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within five days of its determination.

(d) An insurer shall pay an appointment fee, in the amount and method of payment set forth in article 7, for each insurance producer appointed by the insurer.

(e) An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in article 7.

§431: -115 Notification to commissioner of termination. (a) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using the applicable format prescribed by the commissioner. An insurer or insurer representative who terminates a producer for one of the reasons set forth in section 431: -112 or who has knowledge the producer was found by a court, governmental body, or self-regulatory organization to have engaged in any of the activities in section 431: -112, shall use the particular format for that situation as prescribed by the commissioner. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer or representative discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) had the insurer then known of its existence.

(c) The insurer and producer are subject to the following:

(1) Within fifteen days after making the notification required by subsections (a) and (b), the insurer shall mail a copy of the notification to the producer at the producer's last known address. If the producer is terminated for any of the causes listed in section 431: -112, the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (e).

(d) Immunity from civil liability for notification applies as follows:

(1) In the absence of actual malice, an insurer, the insurer's authorized representative, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination under subsection (a) was reported to the commissioner, provided that the propriety of any termination under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under paragraph (1) for making any statement required by this section or for providing any information relating to any statement that may be re-

quested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

- (3) Paragraphs (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (e) Confidentiality and privilege from disclosure is established as follows:
 - (1) Any documents, materials, or other information in the control or possession of the commissioner or any agent of the commissioner that is furnished by an insurer, producer, or an employee or agent thereof who is acting on behalf of the insurer or producer, or is obtained by the commissioner, any agent of the commissioner, the insurance division, or any employee of the insurance division, in an investigation pursuant to this section shall be confidential and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any civil action; provided that the commissioner or the commissioner's designee is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.
 - (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be required to testify in any civil action concerning any confidential documents, materials, or information subject to paragraph (1).
 - (3) Any provision to the contrary notwithstanding, the commissioner may:
 - (A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (1), with other state, federal, and international regulatory and law enforcement agencies and authorities, the NAIC, and their affiliates or subsidiaries; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
 - (B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates or subsidiaries and from state, federal, and international regulatory and law enforcement agencies and authorities and shall maintain as confidential or privileged any document, material, or information received with the notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
 - (C) Enter into agreements governing sharing and use of information consistent with this subsection.
 - (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing, receiving, or using the information as authorized in paragraph (3).
 - (5) Nothing in this article shall prohibit the commissioner from releasing final, adjudicated actions including terminations that are open to public inspection pursuant to section 431:2-209 to a database or other clearinghouse service maintained by the NAIC or its affiliates or subsidiaries.

(f) An insurer, the authorized representative of the insurer, or a producer who fails to report as required under the provisions of this section or who is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with article 2.

§431: -116 Reciprocity. (a) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by section 431: -108, so long as the applicant's home state awards nonresident licenses to residents of this State on the same basis.

(b) A nonresident producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements so long as the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this State on the same basis.

§431: -117 Reporting of actions. (a) A producer shall report to the commissioner any civil or administrative action taken against the producer in any jurisdiction or by a governmental agency in any state within thirty days of the final disposition of the matter.

(b) Within thirty days of arraignment, a producer shall report to the commissioner any criminal prosecution of the producer being taken in any jurisdiction.

(c) The report shall include a copy of the initial complaint or indictment filed and any and all other relevant legal documents.

§431: -118 Rules. The commissioner may, in accordance with chapter 91, adopt reasonable rules as are necessary or proper to carry out the purposes of this article.

§431: -119 Scope of examination. (a) The commissioner shall prescribe each examination, and each examination shall be of reasonably sufficient scope to test the applicant's knowledge relative to the classes of insurance that may be dealt with under the license applied for, the duties and responsibilities relating thereto, and the laws of this State that are applicable to the licensee.

(b) The commissioner is required to prepare and make available to insurance producers a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license.

§431: -120 Time of examinations. (a) The commissioner shall give examinations within this State at such times and places as may reasonably serve the convenience of both the commissioner and applicants.

(b) The commissioner may require a waiting period of not more than six months before giving a new examination to an applicant who has failed to pass two previous, similar examinations.

§431: -121 Advisory board. The commissioner may, in the commissioner's discretion, appoint a group of individuals, to be known as the advisory board, to make recommendations to the commissioner concerning any matter relating to the examinations provided for by this article. Any individual appointed to the advisory board shall not be entitled to any compensation for the individual's services. The commissioner shall select a group that fairly represents the insurance industry in this State. The commissioner shall decide how long each individual is to

serve on the advisory board. This section shall not be subject to the requirements of chapter 92.

§431: -122 Place of business. (a) Every licensed insurance producer shall have and maintain in this State, or, if a nonresident insurance producer, in the nonresident's home state, a place of business accessible to the public.

(b) The place of business shall be where the licensee principally conducts transactions under the licensee's licenses.

(c) The licensee shall promptly notify the commissioner of any change of business address.

§431: -123 Records of insurance producer. (a) Every insurance producer shall keep a record of all transactions consummated under the producer's license. This record shall be in a form organized according to class of insurance and shall include:

(1) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and

(2) Other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(b) All the records as to any particular transaction shall be kept in the licensee's office and shall be available and open to the inspection of the commissioner during business hours during the five years immediately after the date of the completion of the transaction.

(c) This section shall not apply to life or disability insurance if the records required of such insurance are customarily maintained in the offices of the insurer.

§431: -124 Prerequisites for license renewal. (a) In addition to payment of fees required in section 431:7-101, to qualify for a license renewal a licensee shall:

(1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and

(2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours shall be as follows:

(1) For a licensee authorized to sell classes of insurance in only one of the following groups:

(A) Life or disability; or

(B) Property, marine and transportation, vehicle general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the class of insurance for which the license is held, including three credit hours relating to the insurance laws and the insurance rules;

(2) For a licensee with a license to sell classes of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:

(A) Twelve hours shall relate to paragraph (1)(A) of which three hours shall relate to the insurance laws and the rules relating to the class of insurance for which the license is held; and

(B) Eighteen hours shall relate to paragraph (1)(B) of which three hours shall relate to the insurance laws and the rules relating to the class of insurance for which the license is held.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carryover credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements one month prior to the renewal date shall result in that licensee's license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours have been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431: -116.

§431: -125 Continuing education recordkeeping. (a) Licensees shall maintain their own continuing education records and shall keep these records for four years after completion of an approved continuing education course.

(b) Approved course providers shall maintain attendance records for five years to permit the commissioner to verify the attendance and course completion of all licensees enrolled in an approved course. These course providers shall make the records available at all times to the commissioner.

§431: -126 Power to fine. (a) The order levying the fine through section 431: -112 shall specify the period within which the fine shall be fully paid, and that period shall be not less than thirty nor more than forty-five days from the date of the order.

(b) Upon the licensee's failure to pay any fine when due, the commissioner shall revoke the license of the licensee if not already revoked, and the fine may be recovered in a civil action brought on behalf of the commissioner by the attorney general.

(c) Any fine collected shall be paid by the commissioner to the director of finance for the account of the insurance regulation fund.

§431: -127 Fine in lieu. (a) Upon the hearing of an appeal from an order imposing any sanction upon a licensee in accordance with section 431: -112, the court may impose a fine of not more than \$10,000 in lieu of the commissioner's action, and payment of that fine within ten days of the court's order shall result in the acceptance of the licensee's application or the reinstatement, restoration, or extension of that license if:

- (1) The court finds that the licensee violated the law; and
- (2) The court deems the sanction imposed too severe a penalty under the facts as found.

(b) If the licensee has previously been sanctioned for a similar offense, the court shall not have jurisdiction to impose a fine in lieu of the commissioner's action.

§431: -128 Nondiscrimination. Continuing education courses provided by insurers to insurance producers shall be subject to the same standards, reviews,

and credits as other continuing education courses. Nothing in this article is intended to preclude the provision of continuing education courses by insurers to insurance producers; provided that no credit shall be given for any course unless it is a continuing education course approved by the commissioner.

§431: -129 Penalty. (a) The commissioner shall sanction the license of any licensee who has submitted an invalid, false, or fraudulent certificate of completion, subject to the right of a licensee to have a hearing as provided in chapter 91.

(b) The commissioner shall revoke the approval of an approved course provider who has issued a certificate of completion to a licensee who has not attended the continuing education course to a licensee who has not met the course requirements, subject to the right of an approved course provider to have a hearing as provided in section 431:2-308.

§431: -130 Commissioner's authority to grant waiver. Upon the receiving of a written request and a showing of good cause, the commissioner shall have the authority to grant a waiver of any requirement of an insurance law or insurance rule as applied to an applicant or a producer."

SECTION 3. Section 431:2-303, Hawaii Revised Statutes, is amended to read as follows:

"§431:2-303 Examination of [~~agents, solicitors,~~] producers, adjusters, promoters, and independent bill reviewers. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as the commissioner deems advisable examine the insurance accounts, records, documents, and transactions of:

- (1) Any insurance [~~general agent, subagent, solicitor,~~] producer, adjuster, or independent bill reviewer, including insurance agencies and surplus lines agencies; or
- (2) Any person engaged in, proposing to be engaged in, or assisting in the promotion or formation of a domestic insurer, a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer."

SECTION 4. Section 431:2-305, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the insurer, its [~~agents,~~] producers, or other persons examined, or as ascertained from the testimony of its officers [~~or agents,~~] producers, or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts."

2. By amending subsection (d) to read:

- (d) Orders shall be issued and hearings conducted as follows:

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Any order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating

under oath that they have received a copy of the adopted report and related orders, except that for examinations of ~~[general agents, subagents, solicitors,]~~ producers, adjusters, independent bill reviewers, or surplus lines brokers, serving the copy of the adopted report and related orders by certified-return receipt requested mail will satisfy the service requirement and no affidavits shall be required; and

- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer or person. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subsection (c)(1):

- (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;

- (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and

- (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency."

SECTION 5. Section 431:3-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements in subsection (a), to qualify for and hold a certificate of authority, foreign and alien insurers must[:

- (1) ~~Have appointed a general agent who is qualified according to the standards set forth in article 9; provided that this paragraph shall not apply to foreign and alien reinsurers licensed to transact business in Hawaii that assume any portion of the risk of another insurer; and~~
- (2) ~~Have]~~ have continuously, actively, and successfully transacted the business of insurance for at least five years immediately prior thereto; provided that in the case of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary) of a capital stock or mutual insurer, the five-year period shall be computed from the date of the organization of the original or parent insurer or insurers if substantially the same management continues."

SECTION 6. Section 431:3-218, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-218 Procedure upon revocation; suspension of certificate of authority. Upon revoking, suspending, or refusing to extend an insurer’s authority to transact insurance, the commissioner shall forthwith:

- (1) Give notice thereof to the insurer not less than ten days in advance of the effective date of the revocation or suspension[.];
- (2) Likewise revoke or suspend all [agents’] producers’ authority to represent the insurer in this State and give notice thereof to the [agents.] producers; and
- (3) Give notice thereof to the insurance supervisory official of each other state in which the insurer is authorized to transact insurance.”

SECTION 7. Section 431:9-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-101 Scope. This article shall govern the qualifications and procedures for granting licenses to all insurance [~~agents, brokers, surplus lines brokers, nonresident agents or brokers, subagents, solicitors,~~] adjusters, independent bill reviewers, and limited service representatives.”

SECTION 8. Section 431:9-201, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-201 License required. (a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be [~~a general agent, subagent, solicitor,~~] an adjuster[.] or independent bill reviewer unless so licensed by this State.

~~[(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any class of insurance for which the general agent, subagent, or solicitor is not licensed and does not hold an appointment from the insurer in this State for that class of insurance.~~

~~[(c) A regular salaried officer or employee of an authorized insurer shall not be required to be licensed by reason of rendering assistance to, or on behalf of a licensed general agent, subagent, or solicitor, provided that the salaried officer or employee devotes substantially all of the officer’s or employee’s time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.]~~

~~[(d)]~~ (b) Any person violating this section shall be assessed a civil penalty not to exceed \$5,000 for each factually different violation.

~~[(e)]~~ (c) Any person who knowingly violates this section shall be assessed a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

~~[(f)]~~ (d) Each repetition of an act that constitutes a violation subject to subsection (d) or (e) shall constitute a separate violation.”

SECTION 9. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each applicant for license as [~~general agent, subagent, solicitor,~~] an adjuster[.] or independent bill reviewer shall prior to the issuance of any such license, personally take and pass to the satisfaction of the commissioner an examination given by the commissioner as a test of the applicant’s qualifications and competence.

(b) This requirement shall not apply to[.]:

- (1) Applicants for limited licenses, as travel insurance subagents or solicitors only, under section 431:9-214;

- (2) Applicants] applicants who at any time within the three-year period next preceding date of application held a license in this State which conferred powers comparable to those being applied for[;
- [(3) Applicants for a general agent's, subagent's, or solicitor's license for life insurance or life disability insurance who hold the designation chartered life underwriter (C.L.U.) from The American College; or
- (4) Applicants for a general agent's, subagent's, or solicitor's license for any class of insurance, except life insurance, who hold the designation chartered property and casualty underwriter (C.P.C.U.) from the American Institute for Property and Liability Underwriters, Incorporated].''

SECTION 10. Section 431:9-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner is required to prepare and make available to insurers[, general agents, subagents,] and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license.”

SECTION 11. Section 431:9-220, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-220 Process against nonresident licensees.** (a) Each licensed nonresident [~~agent or broker~~] producer shall appoint the commissioner as the [~~agent's or broker's~~] producer's attorney to receive service of legal process issued against the [~~agent or broker~~] producer in this State upon causes of action arising within this State. Service upon the commissioner as attorney shall constitute effective legal service upon the [~~agent or broker.~~] producer.

(b) The appointment shall be irrevocable for as long as there could be any cause of action against the [~~agent or broker~~] producer arising out of the [~~agent's or broker's~~] producer's insurance transactions in this State.

(c) Service of process on the commissioner shall be made in accordance with [~~the provisions of~~] section 431:2-206.”

SECTION 12. Section 431:9-227, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-227 [General agent or subagent] Producer may adjust without a license.**

- (a) [(1) On behalf of and as authorized by an insurer, a general agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster; and
- (2) On behalf of and as authorized by the general agent, with respect to whom a subagent is licensed as subagent, a subagent]

A producer may from time to time, and whether or not on behalf of and as authorized by an insurer, act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(b) An adjuster who is a [~~general agent or a subagent~~] producer is not permitted to adjust or cause the adjustment of any loss where the adjuster's remuneration for the sale of insurance is primarily dependent upon the adjustment of the loss. This subsection shall not be applicable to any [~~general agent or subagent~~] producer whose remuneration for the sale of insurance, on December 31, 1955, was primarily dependent upon the adjustment of losses, or to any [~~general agent, subagent,~~] producer or an insurer who, on December 31, 1955, was transacting

insurance where the ~~[general agent's or subagent's]~~ producer's remuneration for the sale of such insurance was primarily dependent upon the adjustment of losses."

SECTION 13. Section 431:9-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensed ~~[general agent, subagent,]~~ adjuster, and independent bill reviewer shall have and maintain in this State~~[- or, if a nonresident agent or broker, in the state of the agent's or broker's domicile,]~~ a place of business accessible to the public."

SECTION 14. Section 431:9-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every ~~[general agent, subagent,]~~ adjuster~~[-]~~ or independent bill reviewer shall keep a record of all transactions consummated under their license. This record shall be in organized form according to class of insurance and shall include:

[1] ~~If a general agent or subagent:~~

(A) ~~A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and~~

(B) ~~The names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid;~~

(2) ~~(1)~~ If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment;

(3) ~~(2)~~ If an independent bill reviewer, a record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and

(4) ~~(3)~~ Any additional information as shall be customary, or as may reasonably be required by the commissioner."

SECTION 15. Section 431:9-230, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensed ~~[general agent, subagent, solicitor, and]~~ adjuster shall have the responsibilities of a trustee for all premium and return premium funds received or collected under this article."

SECTION 16. Section 431:10A-404, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-404 Persons authorized to transact insurance. Notwithstanding the provisions of article 9, any person licensed to transact disability insurance as a ~~[general agent, subagent or solicitor]~~ producer may transact extended health insurance and may be paid a commission in accordance with commission schedules filed with the commissioner as required by section 431:10A-406."

SECTION 17. Section 431:10B-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The enrolling of debtors under a group creditor policy and the issuance of certificates of insurance pursuant thereto or the issuing of individual policies by a

creditor shall not be considered a sale or solicitation of insurance or the transaction of an insurance business. A limited license issued under section 431:9-214 shall be required for such acts. [~~An agent's~~] A producer's or broker's license shall not be required."

SECTION 18. Section 431:10C-110, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-110 Rejection of application, joint underwriting plan placement. A [~~general agent,~~] producer, including a branch office of a foreign or alien insurer, [~~subagent, or solicitor~~] upon rejection of an application for a motor vehicle insurance policy or optional additional insurance, shall immediately offer, subject to the guidelines established by rules of the commissioner, to place the requested insurance coverages with the joint underwriting plan."

SECTION 19. Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any insurer, any [~~general agent, agent, solicitor,~~] producer, or any representative of an insurer who violates subsection (a) shall be subject to section 431:10C-117."

SECTION 20. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of "producer" to read as follows:

"'"Producer'" [~~means~~] includes any general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9."

SECTION 21. Section 431:10H-221, Hawaii Revised Statutes, is amended by amending subsections(a), (b), and (c) to read as follows:

"(a) Application forms shall include questions designed to elicit information as to whether, as of the date of application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and [~~agent,~~] producer, except where the coverage is sold without [~~an agent,~~] a producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by paragraph (1) under the definition of "group long-term care insurance" in section 431:10H-104, the following questions may be modified only to the extent necessary to elicit information about health and long-term care insurance policies other than the group policy being replaced; provided that the certificate holder has been notified of the replacement:

- (1) Do you have another long-term care insurance policy or certificate in force (including a health care service contract or health maintenance organization contract)?
- (2) Did you have another long-term care insurance policy or certificate in force during the last twelve months?
 - (A) If so, with which company?
 - (B) If that policy lapsed, when did it lapse?
- (3) Are you covered by medicaid?
- (4) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(b) [~~Agents~~] Producers shall list any other health insurance policies they have sold to the applicant, and the [~~agent~~] producer shall list policies sold that are still in force and list policies sold in the past five years that are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its [agent,] producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the same manner as shown in Section 12(C) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.”

SECTION 22. Section 431:10H-222, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Every insurer shall maintain records for each [agent] producer of the [agent’s] producer’s amount of replacement sales as a per cent of the [agent’s] producer’s total annual sales and the amount of lapses of long-term care insurance policies sold by the [agent] producer as a per cent of the [agent’s] producer’s total annual sales.

(b) Every insurer shall report annually by June 30 the ten per cent of its [agents] producers with the greatest percentages of lapses and replacements as measured in subsection (a).

(c) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely [agent] producer activities regarding the sale of long-term care insurance.”

SECTION 23. Section 431:10H-231, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Every insurer, health care service plan, or other entity marketing long-term care insurance (the “issuer”) shall:

- (1) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
- (2) Train its [agents] producers in the use of its suitability standards; and
- (3) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(c) To determine whether the applicant meets the standards developed by the issuer, the [agent] producer and issuer shall develop procedures that take the following into consideration:

- (1) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
- (2) The applicant’s goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
- (3) The values, benefits, and costs of the applicant’s existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

The issuer, and where [an-agent] a producer is involved, the [agent] producer shall make reasonable efforts to obtain the information set out above. The efforts shall include presentation to the applicant, at or prior to application, the “Long-Term Care Insurance Personal Worksheet”. The personal worksheet used by the issuer shall contain, at a minimum, information in the format contained in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulation in not less than twelve-point type. The issuer may request the applicant to provide additional

information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner."

2. By amending subsections (e) and (f) to read:

"(e) The sale or dissemination outside the company or agency by the issuer or [agent] producer of information obtained through the personal worksheet in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulation is prohibited.

(f) The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to a particular applicant is appropriate. The [agents] producers shall use the suitability standards developed by the issuer in marketing long-term care insurance."

SECTION 24. Section 431:10H-236, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the case of [agent] producer solicitations, [an-agent] a producer shall deliver the shopper's guide prior to the presentation of an application or enrollment form."

SECTION 25. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

"§431:13-104 Favored [agent] producer or insurer; coercion of debtors.

(a) No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or [agent or broker] producer or group of [agents or brokers] producers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension. The requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions;
- (2) Unreasonably reject a contract of insurance furnished by the borrower where insurance is required by the loan or credit transaction. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the loan or credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, [broker,] or [agent] producer pay a separate charge, in connection with the handling of any contract of insurance required by the loan or credit transaction, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose information relative to a contract of insurance which is required by, or supplied in response to, the loan or credit transaction, for the purpose of replacing the insurance or soliciting insurance;

- (5) Require any procedures or conditions of duly licensed [~~agents, brokers,~~] producers or insurers not customarily required of those [~~agents, brokers,~~] producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or [~~agent~~] producer of the borrower's choice, subject only to the lender's right to reject a given insurer or [~~agent~~] producer as provided in subsection (b)(2). Compliance with disclosures as to insurance required by [~~Truth-In-Lending~~] truth-in-lending laws or comparable state laws shall be in compliance with this paragraph."

SECTION 26. Section 431K-11, Hawaii Revised Statutes, is amended to read as follows:

"§431K-11 Duty of [~~agents or brokers~~] producer to obtain license and to keep records. (a) Any person acting or offering to act as [~~an agent or broker~~] a producer for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State, before commencing any such activity shall obtain a license from the commissioner.

(b) Whenever a licensed insurance [~~agent~~] producer or surplus lines [~~broker~~] producer places business pursuant to subsection (a), the [~~agent or broker~~] producer shall keep a complete and separate record of each policy procured from a risk retention group and for a purchasing group. The record shall be open to examination by the commissioner. For each policy and each kind of insurance provided in the policy, the record shall include the following:

- (1) The limit of liability and peril insured;
- (2) A brief description of the property insured and its location;
- (3) The effective date of the contract and its terms;
- (4) The time period covered by the contract;
- (5) The gross premium charged;
- (6) Any return premiums paid;
- (7) The name and address of the risk retention group which issued the policy;
- (8) The name and address of the insured; and
- (9) Any additional information required by the commissioner."

SECTION 27. Section 432:2-609, Hawaii Revised Statutes, is amended to read as follows:

"§432:2-609 Licensing of [~~agents~~] producers. (a) Fraternal benefit society [~~agents~~] producers shall be licensed in accordance with the provisions governing [~~solicitors~~] producers in article [9] ____ of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society [~~agents~~] producers are not prohibited from obtaining additional licenses provided for in article 9. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988.

(b) No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes substantially all of the officer's, employee's or member's services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

(c) Any [agent,] producer, representative or member of a society who devotes, or intends to devote, less than fifty per cent of [such] that person's time to the solicitation and procurement of insurance contracts for [such] the society shall be exempt from the requirements of subsection (a). Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty per cent of the person's time to the solicitation or procurement of insurance contracts for such society."

SECTION 28. Section 431:9-102, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 431:9-103, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 431:9-104, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 431:9-202, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 431:9-205, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 431:9-210, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 431:9-211, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 431:9-211.5, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 431:9-212, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 431:9-213, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 431:9-215, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 431:9-216, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 431:9-217, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 431:9-218, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 431:9-219, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 431:9-221, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 431:9-231, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 431:9-233, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 431:9-234, Hawaii Revised Statutes, is repealed.

SECTION 47. Article 9A of chapter 431, Hawaii Revised Statutes, is repealed.

ACT 217

SECTION 48. Statutory material to be repealed is bracketed and stricken.¹
New statutory material is underscored.

SECTION 49. This Act shall take effect on July 1, 2002.

(Approved June 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 217

S.B. NO. 1349

A Bill for an Act Relating to Mutual Benefit Societies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 432:1-201, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-201 Incorporation by charter. Any mutual benefit society may be or become incorporated by charter ~~[as provided in sections 416-19 and 416-20]~~, notwithstanding any limitations under the corporation law as to the purposes for which charters may be granted. Any society so chartered as a corporation shall be subject in all respects to this article.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 218

S.B. NO. 1414

A Bill for an Act Making Appropriations for Uniform Laws.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York legislature authorized the appointment of commissioners “to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.” In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892, the first National Conference of Commissioners on Uniform State Laws (commonly referred to as the “NCCUSL” or the “Uniform Law Commissioners”) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the NCCUSL. As it has developed, the NCCUSL is a confederation of state interests. It

arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

The NCCUSL, as a state service organization, depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the NCCUSL. In addition, each state commission requests an amount to cover its travel to the NCCUSL annual meeting.

The NCCUSL is a unique institution created to consider state law and to determine in which areas of the law uniformity is important. The work of the NCCUSL has been a valuable addition over time and has improved state law in a great many subject areas. Included in that work have been acts such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Reciprocal Enforcement of Support Act, the Uniform Child Custody Jurisdiction Act, the Uniform Anatomical Gift Act, and the Model State Administrative Procedure Act, acts which have been adopted uniformly by nearly all the states or which have been heavily utilized by most state legislatures. Even with acts that have not been uniformly adopted, the texts consistently contribute to the improvement of the law and have served as valuable references for the legislatures in their effort to improve the quality of state law.

The procedures of the NCCUSL ensure meticulous consideration of each uniform or model act. The NCCUSL spends a minimum of two years on each draft. Sometimes, the drafting work extends much longer. The drafting work for such large-scale acts as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Land Transactions Act took nearly a decade to complete. No single state has the resources necessary to duplicate this meticulous, careful, and non-partisan effort. Without the NCCUSL, nothing like the existing body of uniform state laws would be available to the states.

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No uniform law commissioner is paid for services rendered. The uniform law commissioner receives reimbursement solely for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent on research and drafting work — solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, a conservative estimate. The total requested contribution of all the states for the operation of the NCCUSL is \$1,405,000 in 2000-2001. The smallest state contribution is \$8,500 (U.S. Virgin Islands) and the largest is \$121,600 (California). Hawaii's contribution is \$13,970, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the NCCUSL guarantees any state a substantial return on each dollar invested. The average number of current uniform and model acts adopted in all states is seventy. Hawaii has had one hundred nine enactments of uniform acts, amendments to uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very substantial and valuable services.

The NCCUSL works efficiently for all of the states because individual lawyers are willing to donate time to the uniform law movement, and because it is a genuine cooperative effort of all the states. The NCCUSL seemed like a very good idea to its founders in 1892. They dealt with nearly insolvable problems resulting from the rapid growth of the United States, set against a backdrop of increasingly inadequate and confusing state laws.

The NCCUSL continues to be a very good idea. The states have chosen to maintain the NCCUSL because it has been useful to them and because it strengthens

the states in a federal system of government. Different laws in different states continue to present problems. Unless the states can solve these problems, the issues are usually decided in the United States Congress. Without a state-sponsored national institution like the NCCUSL, more and more legislative activity would shift from the state capitols to Capitol Hill in Washington, D.C.

The procedures for preparing an act are the result of long experience with the creation of legislation. The NCCUSL maintains a standing committee called the Scope and Program Committee that considers new subject areas of state law as potential areas for uniform or model acts. That committee studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the NCCUSL Executive Committee and to the entire NCCUSL for approval or disapproval, however the case may be.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged to provide professional drafting assistance, although a few committees work without professional assistance. Most often, the reporters are law professors who work with the drafting committees for very modest honorariums and have specific expertise in the area of law being addressed.

Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government, from organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to work with drafting committees and to contribute comments. They do not make final decisions with respect to the final contents of an act. Only the NCCUSL members who compose the drafting committee may do this.

A committee meets according to the needs of the project. Meetings ordinarily begin on Friday morning and finish by Sunday noon, so as to minimize overlap with ordinary working hours. A short act may require one or two committee meetings. Major acts may require a meeting per month for a considerable period of time. Some acts require several years of deliberation. A given committee may produce a number of successive drafts as an act evolves.

The NCCUSL is convened as a body once a year. It meets for a period of eight to twelve days, usually in July or August. At each annual meeting, during its working life, each drafting committee must present its latest working draft to the whole body of the NCCUSL. The entire text of each working draft is actually read aloud — a reading of a proposed uniform law is not by title only, but is considered section by section either by section title or word for word — and debated during proceedings of the committee of the whole. This scrutiny continues from annual meeting to annual meeting until a final draft satisfies the whole body of the commissioners. No proposed uniform law becomes officially recognized as a uniform act without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting and a final reading at a subsequent annual meeting. As noted previously, there is often more than one interim reading and a drafting process that exceeds two years in duration. A draft becomes an official act by a majority vote of the states (one vote to each state). The vote by states completes the drafting work and the act is ready for consideration by the state legislatures.

The cost of this process to the states consists of travel expenses, paper and publication costs, and meeting costs. Nearly all the professional services are do-

nated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.

The governing body of the NCCUSL is the NCCUSL Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the NCCUSL. Certain activities are conducted by standing committees. As mentioned above, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the NCCUSL to the state legislatures.

A small staff located in Chicago operates the national office of the NCCUSL. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the NCCUSL.

The NCCUSL has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers six people. Included in that number are the Chief Administrative Officer, the Legislative Director/Legal Counsel, and the Communications Officer, who are the only executive staff. The Executive Director's position is part-time, and is traditionally occupied by someone from the law school community. In addition, the NCCUSL contracts with professional, independent contractors for part of its public information and educational materials.

The NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

Hawaii created a commission to participate in the NCCUSL in 1911. The Hawaii commission to promote uniform legislation is presently within the department of the attorney general and, pursuant to section 26-7, Hawaii Revised Statutes, is advisory to the attorney general and to the legislature on matters relating to the promotion of uniform legislation. Pursuant to sections 3-1 and 26-7, Hawaii Revised Statutes, the commission consists of five members, who are appointed by the governor, with the advice and consent of the senate, for staggered terms of four years and until their successors are appointed and qualified. The NCCUSL Constitution requires that each commissioner be a lawyer. A deputy attorney general, assigned by the attorney general to coordinate the review and preparation of legislative bills, sits with the commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the NCCUSL.

The work of the NCCUSL cannot be accomplished independently by a small state such as the State of Hawaii. Consequently, the continued support of and participation in the NCCUSL by this State is essential to continue the work of drafting and revising uniform laws concerning matters of state interest. The purpose of this Act is to provide the necessary funds for Hawaii's contribution to the costs of the NCCUSL for fiscal year 2001-2002 and for the costs of sending Hawaii's delegation to the NCCUSL 2001 annual meeting.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,500, or so much thereof as may be necessary for fiscal year 2001-2002 to fund Hawaii's contribution to the costs of the National Conference of Commissioners on Uniform State Laws and to fund registration and travel expenses for the delegation of the Hawaii commission to promote uniform legislation to attend the 2001 annual meeting of the National Conference of Commissioners on Uniform State Laws.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

ACT 219

S.B. NO. 1455

A Bill for an Act Relating to the Children's Advocacy Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 588, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“~~[CHAPTER 588]~~
CHILDREN'S ~~[ADVOCACY]~~ JUSTICE PROGRAM”**

SECTION 2. Chapter 588, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§588- Coordination function. (a) The program shall promote the sharing of information among agencies providing services to the child and family, for purposes of implementing this chapter.

(b) All agencies and their providers that have information regarding the mental, physical health, or other information relating to the best interest of the child shall share the information among the agencies working with the child unless otherwise prohibited by federal or state statute or rule. No agency shall further disclose any confidential information unless written consent expressly authorizing further disclosure is obtained from the person who is the subject thereof, or disclosure is permitted by law.”

SECTION 3. Section 588-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[§588-1]~~ Children's ~~[advocacy]~~ justice program; establishment, purpose. (a) There is established a children's ~~[advocacy]~~ justice program within the judiciary. The mission of the program is to provide for the special needs of children as witnesses by promoting coordination for appropriate investigation, treatment, and legal processes, thereby reducing and preventing unnecessary trauma to children and ensuring justice for children and their families.

(b) The purpose of the program shall be to:

- (1) Develop, achieve, and maintain interagency and interprofessional cooperation and coordination in the investigation of and case management of intrafamilial and extrafamilial child sex abuse and serious physical child abuse cases;
- (2) ~~[Obtain evidence useful for both criminal prosecution as well as protective action in civil proceedings;]~~ Facilitate in an impartial manner the professional gathering of information by public and private agencies and their providers for court proceedings involving child victims and witnesses;
- (3) Reduce to the absolute minimum the number of interviews of child sex abuse victims so as to minimize revictimization of the child;
- (4) Coordinate the therapeutic and treatment program for child sex abuse victims and their families;

- (5) Provide for a multidisciplinary team and case management approach which is focused first, on the alleged or suspected child sex abuse victim's needs and conditions; second, on the family members who are supportive of the child and whose interests are consistent with the best interests of the child; and third, on law enforcement and prosecutorial needs;
- (6) Provide for the training and continuing education of skilled professional interviewers of child sex abuse victims; and
- (7) Serve as the focus of information and referral for child sex abuse programs."

SECTION 4. Section 588-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§588-2~~]]~~ [Definition] Definitions of child [sexual] abuse. For [the purpose] purposes of this chapter[, ~~“child sexual abuse”~~]:

“Child sexual abuse” means any of the offenses described under chapter 707, part V, when committed on a person under the age of [~~sixteen~~] eighteen years or as [is] set forth in paragraph (2) of the definition of [harm] **“harm”** in section 587-2.

“Serious physical child abuse” means any of the offenses described in paragraph (1) of the definition of **“harm”** set forth in section 587-2 when the offense rises to the degree of a felony as defined in section 701-107.”

SECTION 5. Section 588-4, Hawaii Revised Statutes, is amended to read as follows:

“§588-4 Duties of the director. The director shall:

- (1) Enter into agreements with police departments, departments of the prosecuting attorneys and county corporation counsels, the departments of the attorney general, health, and human services, and other public and private agencies, including agreements for the temporary assignment of appropriate personnel from each agency to the program;
- (2) Enter into contracts for the provision of specialized training and continuing education for interviewers of child sex abuse victims and child witnesses from both public and private [~~agencies;~~] agencies and providers;
- (3) Arrange for [~~the conduct of~~] interviews of child sex abuse victims [~~at the child's home or other~~] and child witnesses in an appropriate setting[, ~~to include the selection of the interviewer for each child sex abuse victim~~];
- (4) [~~Coordinate the therapeutic and treatment services by public and private agencies for child sex abuse victims;~~] Promote interagency cooperation and coordination, including information sharing and gathering, among the public and private agencies and their providers that deliver investigative, case management, and therapeutic services;
- (5) Coordinate the flow of information between the agencies responsible for criminal prosecution and [~~those~~] the agencies responsible for protective action in civil [~~proceedings;~~] proceedings, including those professionals providing services to children and their families;
- (6) Arrange for the exchange of information, to include statistical data from public and private agencies involved in child sex abuse programs and issues;

- (7) Develop recommendations and plans for action to assist the public and private agencies involved in cases of child sex abuse [eases;] and serious physical child abuse; and
- (8) Prepare and maintain records and reports for the program.”

SECTION 6. Section 588-6, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 8. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)

Note

- 1. Prior to amendment an end quote appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 220

S.B. NO. 1550

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new article to chapter 431 to be appropriately designated and to read as follows:

**“ARTICLE
PRIVACY OF CONSUMER FINANCIAL INFORMATION
PART I. GENERAL PROVISIONS**

§431: -101 Purpose; scope; applicability. (a) This article governs the treatment of nonpublic personal financial information about individuals by all insurance licensees. This article:

- (1) Requires licensees to provide notice to individuals about its privacy policies and practices;
- (2) Establishes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and
- (3) Provides methods for individuals to prevent a licensee from disclosing that information.

(b) This article shall apply to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of a licensee’s products or services primarily for personal, family, or household purposes. This article shall not apply to information about companies or about individuals that obtain products or services for business, commercial, or agricultural purposes.

(c) Notice provisions under part II of this article shall not apply to licensees in liquidation or receivership.

§431: -102 Definitions. As used in this article:

“Affiliate” means any company that controls, is controlled by, or is under common control with another company.

“Clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

“Collect” means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other

identifying particular assigned to the individual, without regard to the source of the underlying information.

“Commissioner” means the insurance commissioner of the State.

“Company” means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, mutual benefit society, health maintenance organization, nonprofit corporation, or similar organization.

“Consumer” means an individual, or that individual’s legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information.

“Consumer reporting agency” has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act, title 15 United States Code section 1681a(f), as amended.

“Control” means:

- (1) Ownership, control, or power to vote twenty-five per cent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
- (2) Control in any manner over the election of a majority of the directors, trustees, or general partners or individuals exercising similar functions of the company; or
- (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

“Customer” means a consumer who has a customer relationship with a licensee.

“Customer relationship” means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

“Financial institution” means any institution in the business of engaging in activities that are financial in nature or incidental to financial activities as described in the Bank Holding Company Act of 1956, title 12 United States Code section 1843(k), as amended. “Financial institution” shall not include:

- (1) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, title 7 United States Code section 1, et seq., as amended;
- (2) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971, title 12 United States Code section 2001, et seq., as amended; or
- (3) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions relating to a transaction of a consumer, if the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

“Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity under the Bank Holding Company Act of 1956, title 12 United States Code section 1843(k). “Financial product or service” includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

“Health information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

- (1) The past, present, or future physical, mental, or behavioral health or condition of an individual;
- (2) The provision of health care to an individual; or
- (3) Payment for the provision of health care to an individual.

“Insurance product or service” means any product or service that is offered by a licensee pursuant to the insurance laws of this State. “Insurance product or service” includes a licensee’s evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

“Licensee” means every licensed insurer, producer, and any other person licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered, under chapter 431 or 432, or holding a certificate of authority under chapter 432D. A licensee shall not be subject to part II of this article if the licensee is an employee, agent, or other representative of another licensee acting as the principal if:

- (1) The principal otherwise complies with, and provides the notices required by this article; and
- (2) The licensee does not disclose any nonpublic personal financial information to any person other than to the principal or its affiliates in a manner permitted by this article.

“Licensee” includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this State, but only in regard to the surplus lines placements under article 8, chapter 431. A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with part II of this article if:

- (1) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 431: -401, except as permitted by sections 431: -402 and 431: -403; and
- (2) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in sixteen point type:

“PRIVACY NOTICE: NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.”

“Nonaffiliated third party” means any person except:

- (1) A licensee’s affiliate; or
- (2) A person employed jointly by a licensee and any company that is not the licensee’s affiliate; provided that for purposes of this paragraph, a nonaffiliated third party includes the other company that jointly employs the person.

“Nonaffiliated third party” includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) of the federal Bank Holding Company Act, title 12 United States Code section 1843(k)(4)(H), as amended, or insurance company in-

vestment activities of the type described in the federal Bank Holding Company Act, title 12 United States Code section 1843(k)(4)(H) and (I).

“Nonpublic personal financial information” means:

- (1) Personally identifiable financial information; and
- (2) Any list, description, or other grouping of consumers and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

“Nonpublic personal financial information” shall not include health information, publicly available information except as included on a list described under paragraph (2) of this definition, or any list, description, or other grouping of consumers and publicly available information pertaining to them that is derived without using any personally identifiable financial information that is not publicly available.

“Opt out” means a direction by a consumer that a licensee not disclose nonpublic financial information about that consumer to a nonaffiliated third party, other than as permitted by part IV of this article.

“Personally identifiable financial information” means any information:

- (1) Provided by a consumer to a licensee to obtain an insurance product or service from the licensee;
- (2) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
- (3) The licensee otherwise obtains about a consumer in connection with providing a service to that consumer.

“Personally identifiable financial information” shall not include:

- (1) Health information;
- (2) A list of names and addresses of customers of an entity that is not a financial institution; or
- (3) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

“Producer” means a person required to be licensed under the laws of this State to sell, solicit, or negotiate insurance.

“Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (1) Federal, state, or local government records;
- (2) Widely distributed media; or
- (3) Disclosures to the general public that are required to be made by federal, state, or local law.

For purpose of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

- (1) That the information is of the type that is available to the general public; and
- (2) That the licensee’s consumer has not made the information available to the general public, for information that is of a nature that an individual can direct not be made available to the general public.

PART II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

§431: -201 Initial privacy notice to consumers required. (a) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a consumer:

- (1) Not later than when the licensee establishes a customer relationship, except as provided in subsection (d); and
 - (2) Before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 431: -402 and 431: -403.
- (b) A licensee shall not be required to provide an initial notice to a consumer under subsection (a)(2) if:
- (1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by sections 431: -402 and 431: -403, and the licensee does not have a customer relationship with the consumer; provided that for purpose of this paragraph, a licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship; and
 - (2) A notice has been provided by an affiliated licensee, if the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.
- (c) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee shall be deemed to satisfy the initial notice requirements of subsection (a) if:
- (1) The licensee provides a revised policy notice, under section 431: -205, that covers the customer's new insurance product or service; or
 - (2) The initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, in which case the licensee does not need to provide a new privacy notice under subsection (a).
- (d) A licensee may provide the initial notice under subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:
- (1) Establishing the customer relationship is not at the customer's election; or
 - (2) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.
- (e) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to section 431: -206. If the licensee uses a short-form initial notice for noncustomers according to section 431: -203(c), the licensee may deliver its privacy notice according to section 431: -206.

§431: -202 Annual privacy notice to customers required. (a) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve consecutive months during which that relationship exists. A licensee may define the twelve consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) A licensee shall not be required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(c) If a licensee is required under this section to deliver an annual privacy notice, the licensee shall deliver it according to section 431: -206.

§431: -203 Information to be included in privacy notices. (a) The initial, annual, and revised privacy notices that a licensee provides under sections 431: -201, 431: -202, and 431: -205 shall include the following information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- (1) The categories of nonpublic personal financial information that the licensee collects;
- (2) The categories of nonpublic personal financial information that the licensee discloses;
- (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 431: -402 and 431: -403;
- (4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses, and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 431: -402 and 431: -403;
- (5) A separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted, if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 431: -401 and no other exception in sections 431: -402 and 431: -403 applies to that disclosure;
- (6) An explanation of the consumer's right under section 431: -301(a) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- (7) Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, title 15 United States Code section 1681a(d)(2)(A)(iii), as amended;
- (8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
- (9) Any disclosure that the licensee makes under subsection (b).

(b) If a licensee discloses nonpublic personal financial information under sections 431: -402 and 431: -403, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 431: -201 and 431: -202. When describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) A licensee may satisfy the initial notice requirements in sections 431: -201(a) and 431: -204(c) for a consumer who is not a customer by providing a short form initial notice at the same time the licensee delivers an opt out notice under section 431: -204. A short form initial notice shall:

- (1) Be clear and conspicuous;
- (2) State that the licensee's privacy notice is available upon request; and
- (3) Explain a reasonable means by which the consumer may obtain that notice.

The licensee shall deliver a short form initial notice in accordance with section 431: -206. The licensee shall not be required to deliver its privacy notice with its short form initial notice; provided that the licensee provides the consumer a reasonable means to obtain a privacy notice. If a consumer receives the licensee's

short form notice and requests a privacy notice, the licensee shall deliver a privacy notice under section 431: -206.

(d) The privacy notice may include:

- (1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- (2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

§431: -204 Form of opt out notice to consumers and opt out methods.

(a) A licensee shall provide an opt out notice to each of the licensee's consumers that is clear and conspicuous and accurately explains the right to opt out. The notice shall state:

- (1) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- (2) That the consumer has the right to opt out of that disclosure; and
- (3) A reasonable means by which the consumer may exercise the opt out right.

(b) A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 431: -201.

(c) If a licensee provides the opt out notice later than required for the initial notice in accordance with section 431: -201, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain that any of the joint consumers may exercise the right to opt out; provided that the licensee may:

- (1) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or
- (2) Permit each joint consumer to opt out separately; provided that if a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(f) A consumer may exercise the right to opt out at any time.

(g) A consumer's direction to opt out under this section shall be effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction shall continue to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship shall not apply to the new relationship.

(h) If a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it in accordance with section 431: -206.

§431: -205 Revised privacy notices. (a) Except as otherwise provided in this article, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 431: -201, unless:

- (1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;
- (2) The licensee has provided to the consumer a new opt out notice;
- (3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (4) The consumer does not opt out.

(b) If a licensee is required to deliver a revised privacy notice under subsection (a), the licensee shall deliver it in accordance with section 431: -206.

§431: -206 Delivery. (a) A licensee shall provide any notices required under this article so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

- (1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
- (2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(c) A licensee shall not provide any notice required under this article solely by oral explanation of the notice, either in person or over the telephone.

(d) For customers only, a licensee shall provide the initial notice required by section 431: -201(a), the annual notice required by section 431: -202(a), and the revised notice required by section 431: -205, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(e) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, if the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(f) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of sections 431: -201(a), 431: -202(a), and 431: -205(a), by providing one notice to those consumers jointly.

PART III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

§431: -301 Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties. (a) Except as otherwise authorized under this article, a licensee may not disclose, directly or through any affiliate, any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

- (1) The licensee has provided to the consumer an initial notice as required under section 431: -201;
- (2) The licensee has provided to the consumer an opt out notice as required under section 431: -204;

- (3) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
 - (4) The consumer does not opt out.
- (b) A licensee shall comply with this section, whether or not the licensee and the consumer have established a customer relationship. If a licensee fails to comply with this section, the licensee may not disclose, directly or through any affiliate, any nonpublic personal financial information about a consumer that the licensee has collected, whether or not the licensee collected it before or after receiving the direction to opt out from the consumer.
- (c) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§431: -302 Limits on redisclosure and reuse of nonpublic personal financial information. (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in sections 431: -402 and 431: -403, the licensee's disclosure and use of that information shall be as follows:

- (1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
 - (2) The licensee may disclose the information to its affiliates who may disclose and use the information only to the extent that the licensee may disclose and use the information; and
 - (3) The licensee may disclose and use the information pursuant to an exception under sections 431: -402 and 431: -403, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
- (b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in sections 431: -201 and 431: -202, the licensee may disclose the information only:
- (1) To the affiliates of the financial institution from which the licensee received the information;
 - (2) To its affiliates who may disclose the information only to the extent that the licensee may disclose the information; and
 - (3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.
- (c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in sections 431: -201 and 431: -202, the third party may disclose and use that information, as follows:
- (1) Disclose to the licensee's affiliates;
 - (2) Disclose to its affiliates who may disclose and use the information only to the extent that the third party may disclose and use the information; and
 - (3) Disclose and use the information pursuant to an exception under sections 431: -201 and 431: -202 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- (d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception under sections 431: -201 and 431: -202, the third party may disclose the information only:
- (1) To the licensee's affiliates;

- (2) To the third party's affiliates who may disclose the information only to the extent the third party can disclose the information; and
- (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

§431: -303 Limits on sharing account number information for marketing purposes. (a) A licensee shall not disclose, directly or through an affiliate other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) Subsection (a) does not apply if a licensee discloses a policy number or similar form of access number or access code:

- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, if the service provider is not authorized to directly initiate charges to the account;
- (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
- (3) To a participant in an affinity or similar program if the participants in the program are identified to the customer when the customer enters into the program.

PART IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

§431: -401 Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and for joint marketing. (a) The opt out requirements in sections 431: -204 and 431: -301 shall not apply if a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

- (1) Provides the initial notice in accordance with section 431: -201; and
- (2) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in sections 431: -402 and 431: -403 in the ordinary course of business to carry out those purposes.

(b) The services a nonaffiliated third party performs for a licensee under subsection (a) include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(c) For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§431: -402 Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions. (a) The requirements for initial notice under section 431: -201, for the opt out in sections 431: -204 and 431: -301, and for service providers and joint marketing in sections 431: -401 shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of the entity;
 - (3) A proposed or actual securitization, secondary market sale including sales of servicing rights, or similar transaction related to a transaction of the consumer; or
 - (4) Reinsurance, stop loss, or excess loss insurance.
- (b) As used in this section, "necessary to effect, administer, or enforce a transaction" means that the disclosure is:
- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
 - (2) Required, or is a usual, appropriate, or acceptable method:
 - (A) To carry out the transaction or the product or service business of which the transaction is a part, and to record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (B) To administer, service the benefits, or process the claims relating to the transaction or the product or service business of which it is a part;
 - (C) To provide a confirmation, statement, or other record of the transaction or to provide information on the status or value of the insurance product, or to service to the consumer or the consumer's agent or broker;
 - (D) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - (E) To underwrite insurance at the consumer's request or for purposes, as they relate to the consumer's insurance, of account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits including utilization review activities, participating in research projects, or as otherwise required or specifically permitted by federal or state law; or
 - (F) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;
 - (ii) The transfer of receivables, accounts, or interests therein; or
 - (iii) The audit of debit, credit, or other payment information.

§431: -403 Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information. (a) The requirements for initial notice in section 431: -201, the opt out in sections 431: -204, and 431: -301, and service providers and joint marketing in section 431: -401 shall not apply if a licensee discloses nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, who has not revoked the consent or direction;
- (2) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;
- (3) To protect against or prevent actual or potential fraud or unauthorized transactions;

- (4) For required institutional risk control;
- (5) For resolving consumer disputes or inquiries;
- (6) To persons holding a legal or beneficial interest relating to the consumer or to persons acting in a fiduciary or representative capacity on behalf of the consumer;
- (7) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, or the licensee's attorneys, accountants, and auditors;
- (8) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, title 12 United States Code section 3401 et seq., as amended, to law enforcement agencies including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, and the Secretary of the Treasury, with respect to title 31 United States Code chapter 53, subchapter II (Records and Reports on Monetary Instruments and Transactions), as amended, and title 12 United States Code chapter 21 (Financial Recordkeeping), as amended, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations, or for an investigation on a matter related to public safety;
- (9) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, title 15 United States Code section 1681, et seq., as amended, or from a consumer report reported by a consumer reporting agency;
- (10) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;
- (11) To comply with federal, state, or local laws, rules, and other applicable legal requirements;
- (12) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;
- (13) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law; or
- (14) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

(b) A consumer may revoke a consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under section 431: -204.

PART V. ADDITIONAL PROVISIONS

§431: -501 Protection of Fair Credit Reporting Act. Nothing in this article shall be construed to modify, limit, or supersede the federal Fair Credit Reporting Act, title 15 United States Code section 1681, et seq., as amended, and no inference shall be drawn on the basis of the provisions of this article regarding whether information is transaction or experience information under title 15 United States Code section 602, et seq., as amended.

§431: -502 Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of nonpublic personal financial information under this article.

§431: -503 Violation. A violation of this article shall be deemed an unfair method of competition or unfair or deceptive trade act or practice in the business of insurance in violation of section 431:13-102.

§431: -504 Rules. The commissioner may adopt rules pursuant to chapter 91 to further the purposes of this article.”

SECTION 2. A licensee in the process of conforming to the rules of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, shall be deemed in compliance with this Act for the period ending on July 1, 2002.

SECTION 3. If any section or portion of a section of this Act or its applicability to any person or circumstance is held invalid by a court, the remainder of the Act or the applicability of the provision to other persons or circumstances shall not be affected.

SECTION 4. Upon approval of this Act, to provide sufficient time for licensees to establish policies and systems to comply with this Act, the commissioner may extend the time for compliance with this Act to July 1, 2002; provided that by July 1, 2001, a licensee shall provide an initial notice, as required by section 431: -201 of section 1 of this Act, to consumers who are the licensee’s customers on July 1, 2001. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee’s behalf shall be deemed to satisfy section 431: -401(a)(2) of section 1 of this Act, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, if the licensee entered into the agreement on or before July 1, 2000.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 2, 2001.)

ACT 221

H.B. NO. 175

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Through Act 178, Session Laws of Hawaii (SLH) 1999, and Act 297, SLH 2000, the legislature provided a platform to encourage the continued growth and development of high technology businesses and associated industries in Hawaii. These legislative efforts have resulted in growing interest in Hawaii as a “New Economy” marketplace. Additional incentives must now be put in place to set Hawaii apart as a tech-friendly place to do business for both technical and non-technical businesses.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Technology infrastructure renovation tax credit. (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The amount of the credit shall be four per cent of the renovation costs incurred during the taxable year for each commercial building located in Hawaii.

(c) In the case of a partnership, S corporation, estate, trust, or any developer of a commercial building, the tax credit allowable is for renovation costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

(d) If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the renovation cost for which the deduction is taken.

(e) The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(f) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.

(g) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of credit over liability may be carried forward until exhausted.

(h) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 2000, and shall not be available for taxable years beginning after December 31, 2005.

(i) As used in this section:

“Net income tax liability” means income tax liability reduced by all other credits allowed under this chapter.

“Renovation costs” means costs incurred after December 31, 2000, to plan, design, install, construct, and purchase technology-enabled infrastructure equipment to provide a commercial building with technology-enabled infrastructure.

“Technology-enabled infrastructure” means:

- (1) High speed telecommunications systems that provide Internet access, direct satellite communications access, and videoconferencing facilities;
- (2) Physical security systems that identify and verify valid entry to secure spaces, detect invalid entry or entry attempts, and monitor activity in these spaces;
- (3) Environmental systems to include heating, ventilation, air conditioning, fire detection and suppression, and other life safety systems; and
- (4) Backup and emergency electric power systems.

(j) No taxpayer that claims a credit under this section shall claim any other credit under this chapter.”

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§237- Exemption for public Internet data centers. (a) This chapter shall not apply to the gross income or gross proceeds received by a public Internet data center.

(b) As used in this section:

“Compensated use by the public” means use of equipment, maintenance of equipment, and rental of space in a public Internet data center.

“Public Internet data center” means a facility available for compensated use by the public and designed to:

- (1) House data servers;
- (2) Operate on a twenty-four-hour, seven-day-a-week basis;
- (3) Have redundant systems for electricity, air conditioning, fire suppression, and security; and
- (4) Provide services such as bandwidth, co-location, data backup, complex web hosting, and aggregation for application service providers.

(c) This section shall apply to gross income or gross proceeds received after June 30, 2001, but not after December 31, 2005.

§237- Exemption for sale of net operating loss by qualified high technology business. Effective January 1, 2001, there shall be exempted from the measure of taxes imposed by this chapter all of the value or gross income derived from the sale of a net operating loss by a qualified high technology business defined in section 235-7.3 or by any partner, member, or shareholder of a qualified high technology business in the case of partnerships, limited liability partnerships, limited liability companies classified as partnerships, and S corporations.

This section shall be repealed on December 31, 2005.”

SECTION 4. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§239- Exemption for public Internet data centers. (a) This chapter shall not apply to the gross income or gross proceeds received by a public Internet data center.

(b) As used in this section:

“Compensated use by the public” means use of equipment, maintenance of equipment, and rental of space in a public Internet data center.

“Public Internet data center” means a facility available for compensated use by the public and designed to:

- (1) House data servers;
- (2) Operate on a twenty-four-hour, seven-day-a-week basis;
- (3) Have redundant systems for electricity, air conditioning, fire suppression, and security; and
- (4) Provide services such as bandwidth, co-location, data backup, complex web hosting, and aggregation for application service providers.

(c) This section shall apply to gross income received after June 30, 2001, but not after December 31, 2005.”

SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,900 in the case of:
 - (A) A joint return as provided by section 235-93; or

- (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
 - (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
 - (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual's earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

~~[(d)]~~ (e) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

~~[(e)]~~ (f) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

(g) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

~~[(f)]~~ (h) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

~~[(g)]~~ (i) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating

to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(h)]~~ (j) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(i)]~~ (k) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(j)]~~ (l) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

~~[(k)]~~ (m) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(l)]~~ (n) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(m)]~~ (o) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530."

SECTION 6. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Section 704 of the Internal Revenue Code (with respect to a partner’s distributive share) shall be operative for purposes of this chapter; except that [F]section 704(b)(2)[F] shall not apply to [allocations]:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9[-]; or
- (2) Allocations of net operating loss pursuant to section 235-111.5.”

SECTION 7. Section 235-7.3, Hawaii Revised Statutes, is amended to read as follows:

“§235-7.3 Royalties derived from patents, copyrights, or trade secrets excluded from gross income. (a) In addition to the exclusions in section 235-7, there shall be excluded from gross income, adjusted gross income, and taxable income, amounts received by an individual or a qualified high technology business as royalties and other income derived from any patents, copyrights, and trade secrets:

- (1) Owned by the individual or qualified high technology business; and
- (2) Developed and arising out of a qualified high technology business.
- (b) With respect to performing arts products, this exclusion shall extend to:
 - (1) The authors of performing arts products, or any parts thereof, without regard to the application of the work-for-hire doctrine under United States copyright law;
 - (2) The authors of performing arts products, or any parts thereof, under the work-for-hire doctrine under United States copyright law; and
 - (3) The assignors, licensors, and licensees of any copyright rights in performing arts products, or any parts thereof.

[(b)] (c) For the purposes of this section:

“Performing arts products” means:

- (1) Audio files, video files, audiovideo files, computer animation, and other entertainment products perceived by or through the operation of a computer; and
- (2) Commercial television and film products for sale or license, and reuse or residual fee payments from these products.

“Qualified high technology business” means a business [conducting] that conducts more than fifty per cent of its activities in qualified research[-The term “qualified high technology business” does not include:

- (1) ~~Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;~~
- (2) ~~Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;~~
- (3) ~~Any business operating a hotel, motel, restaurant, or similar business; and~~
- (4) ~~Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home].~~

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code;

- (2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases [øf] for sale or license;
- (3) Biotechnology; [øf]
- (4) Performing arts products[-];
- (5) Sensor and optic technologies;
- (6) Ocean sciences;
- (7) Astronomy; or
- (8) Nonfossil fuel energy-related technology.”

SECTION 8. Section 235-9.5, Hawaii Revised Statutes, is amended to read as follows:

“§235-9.5 Stock options from qualified high technology businesses [exempt] excluded from taxation. (a) Notwithstanding any law to the contrary, all income ~~[received from stock options]~~ earned and proceeds derived from stock options or stock, including stock issued through the exercise of stock options or warrants, from a qualified high technology business or from a holding company of a qualified high technology business by an employee, officer, or director[;] of the qualified high technology business, or investor who qualifies for the credit under section 235-110.9, that would otherwise be taxed as ordinary income or as capital gains to those persons ~~[is exempt]~~ shall be excluded from taxation under this chapter.

Similar provisions shall apply to options to acquire equity interests and to equity interests themselves with regard to entities other than corporations.

(b) For the purposes of this section:

“Holding company of a qualified high technology business” means any business entity that possesses:

(1) At least eighty per cent of the total voting power of the stock or other interest; and

(2) At least eighty per cent of the total value of the stock or other interest; in the qualified high technology business.

“Income earned and proceeds derived from stock options or stock” includes income from:

(1) Dividends from stock or stock received through the exercise of stock options or warrants;

(2) The receipt or the exercise of stock options or warrants; or

(3) The sale of stock options or stock, including stock issued through the exercise of stock options or warrants.

“Qualified high technology business” means [a business conducting more than fifty per cent of its activities in qualified research. The term “qualified high technology business” does not include:

(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

- (3) Any business operating a hotel, motel, restaurant, or similar business; and
- (4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code; or
- (2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology¹] the same as defined in section 235-7.3.”

SECTION 9. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.9 High technology business investment tax credit. (a) There shall be allowed to each taxpayer[;] subject to the taxes imposed by this chapter[;] a high technology business investment tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed. The tax credit shall be [an amount equal to ten per cent] as follows:

- (1) In the year the investment was made, thirty-five per cent;
- (2) In the first year following the year in which the investment was made, twenty-five per cent;
- (3) In the second year following the investment, twenty per cent;
- (4) In the third year following the investment, ten per cent; and
- (5) In the fourth year following the investment, ten per cent;

of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit [of \$500,000 for the taxable year for the investment made by the taxpayer in a qualified high technology business.] in the year the investment was made, \$700,000; in the first year following the year in which the investment was made, \$500,000; in the second year following the year in which the investment was made, \$400,000; in the third year following the year in which the investment was made, \$200,000; and in the fourth year following the year in which the investment was made, \$200,000.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, “net income tax liability” means net income tax liability reduced by all other credits allowed under this chapter.

(c) If the tax credit under this section exceeds the taxpayer’s income tax liability[;] for any of the five years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. [All claims;] Every claim, including [any] amended claims, for a tax [credits] credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) If at the close of any taxable year in the five-year period in subsection (a):

- (1) The business no longer qualifies as a qualified high technology business;
- (2) The business or an interest in the business has been sold by the taxpayer investing in the qualified high technology business; or

(3) The taxpayer has withdrawn the taxpayer's investment wholly or partially from the qualified high technology business; the credit claimed under this section shall be recaptured. The recapture shall be equal to ten per cent of the amount of the total tax credit claimed under this section in the preceding two taxable years. The amount of the credit recaptured shall apply only to the investment in the particular qualified high technology business that meets the requirements of paragraph (1), (2), or (3). The recapture provisions of this subsection shall not apply to a tax credit claimed for a qualified high technology business that does not fall within the provisions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

[(d)] (e) As used in this section:

"Qualified high technology business" means a business, employing or owning capital or property, or maintaining an office, in this State; provided that:

- (1) More than fifty per cent of ~~[whose]~~ its total business activities are qualified research; and provided further that the business conducts more than seventy-five per cent of its qualified research in this State; or
- (2) More than seventy-five per cent of its gross income is derived from qualified research; and provided further that ~~[the]~~ this income is received from:
 - (A) Products sold from, manufactured in, or produced in ~~[the]~~ this State; or
 - (B) Services performed in this State.

²The term "qualified high technology business" does not include:

- (1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;
- (2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
- (3) Any business operating a hotel, motel, restaurant, or similar business; and
- (4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.]

"Qualified research" means[:

- (1) The same as in section 41(d) of the Internal Revenue Code;
- (2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology.] the same as defined in section 235-7.3.

(e) ²This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 10. Section 235-110.91, Hawaii Revised Statutes, is amended as follows:

1. By amending the title and subsection (a) to read:

“§235-110.91 Tax credit for [increasing] research activities. (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section[-]; except that references to the base amount shall not apply and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years. If section 41 of the Internal Revenue Code is repealed or terminated prior to January 1, 2006, its provisions shall remain in effect for purposes of the income tax law of the State as modified by this section, as provided for in subsection (h).”

2. By amending subsections (c), (d), and (e) to read:

“(c) There shall be allowed to each taxpayer, subject to the tax imposed by this chapter, an income tax credit for [increased] qualified research activities equal to the credit for research activities provided by section 41 of the Internal Revenue Code[-] and as modified by this section. The credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(d) As used in this section:

[“Qualified research” under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the State.]

“Basic research” under section 41(e) of the Internal Revenue Code shall not include research conducted outside of the State.

“Qualified research” under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the State.

(e) If the tax credit for [increased] qualified research activities claimed by a taxpayer exceeds the amount of income tax payment due from the taxpayer, the excess of the tax credit over payments due shall be refunded to the taxpayer; provided that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.”

3. By amending subsection (h) to read:

“(h) This section shall ~~not~~ apply to taxable years beginning after December 31, ~~[2005.]~~ 2000, but not to taxable years beginning after December 31, 2005.”

SECTION 11. Section 235-111.5, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) A qualified high technology business as defined in section 235-7.3 may apply to the department ~~[of taxation]~~ to sell its unused net operating loss carryover to another taxpayer. If approved by the department ~~[of taxation]~~, a qualified high technology business may sell its unused net operating loss carryover to another taxpayer in an amount equal to at least seventy-five per cent of the amount of the surrendered tax benefit[-], computed at the corporate rate pursuant to section 235-71; provided that the qualified high technology business may sell no more than \$500,000 of its unused net operating loss carryover to another taxpayer per year. In the case of partnerships, limited liability partnerships, limited liability companies classified as partnerships, and S corporations, each partner, member, or shareholder may sell its share of the entity’s total net operating loss. The tax benefit purchased by the buyer shall be claimed in the year for which the sale is approved by the department. Any use of the purchased net operating loss carryover for tax carryback or carryforward purposes shall comply with applicable law. The income from the sale of the net operating loss carryover received by the seller shall be reported on its tax return in the taxable year received but shall not be considered taxable income.

(b) No application for the sale of unused net operating losses shall be approved if the seller is a qualified high technology business that:

- (1) Has demonstrated positive net income in [any] either of the two previous full years of ongoing operations as determined on its financial statements;
- (2) Has demonstrated a ratio [in-excess] of one hundred ten per cent or greater of operating revenues divided by operating expenses in [any] either of the two previous full years of operations as determined on its financial statements; or
- (3) Is directly or indirectly at least fifty per cent owned or controlled by another corporation that has demonstrated positive net income in [any] either of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliate corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net income in [any] either of the two previous full years of ongoing operations as determined on its combined financial statements[;

as certified and documented by a ~~licensed certified public accountant~~].

In the case of partnerships, limited liability partnerships, limited liability companies classified as partnerships, and S corporations, the application for the sale of unused net operating losses shall only be approved to the extent that all partners, members, or shareholders certify that they have not received a tax benefit from the losses.

- (c) As used in this section[~~—“net”~~]:

“Net operating loss” means a net operating loss for income tax purposes occurring in the two taxable years preceding the year in which the sale of net operating loss carryover occurs.

“Surrendered tax benefit” means the tax liability saved if the net operating loss carryforward could have been used by the qualified high technology business.”

SECTION 12. Section 237-23.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not apply to amounts received, charged, or attributable to services furnished by one related entity to another related entity or to imputed or stated interest attributable to loans, advances, or use of capital between related entities.

As used in this subsection:

“Related entities” means:

- (1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;
- (2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;
- (3) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and
- (4) Any group or combination of the entities described in paragraph (3) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter.

“Services” means legal and accounting services, the use of computer software and hardware, information technology services, database management, and those managerial and administrative services performed by an employee, officer,

partner, trustee, sole proprietor, member, or manager in the person's capacity as an employee, officer, partner, trustee, sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services."

SECTION 13. It is the intention of the legislature that the amendments in this Act be liberally construed. The department of taxation is further given latitude to interpret these amendments in light of industry developments. The legislature does not intend by the amendments in this Act to opine on the interpretation taken by any taxpayer or the department of taxation on any issue arising under prior law.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 15. This Act shall take effect on July 1, 2001; provided that:

- (1) Sections 5, 6, 7, 8, 10, and 11 shall apply to taxable years beginning after December 31, 2000;
- (2) Section 9 shall apply to taxable years beginning after December 31, 2000, but shall not apply to taxable years after December 31, 2005; provided that a taxpayer may continue to claim the credits if the five-year period to claim the credits commences in taxable years beginning before January 1, 2006; and
- (3) Section 12 shall apply to gross income or gross proceeds received after June 30, 2001.

(Approved June 8, 2001.)

Notes

1. Prior to amendment "'." appeared here.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 222

S.B. NO. 643

A Bill for an Act Relating to Dogs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 142-74, Hawaii Revised Statutes, is amended to read as follows:

"§142-74 Liability of dog owner; penalty. (a) If any dog, while on private property without the consent of the owner of that property, injures or destroys any sheep, cattle, goat, hog, fowl, or other property belonging to any person other than the owner of the dog, the owner of the dog shall be liable in damages to the person injured for the value of the property so injured or destroyed. The owner of the dog shall confine or destroy the dog, and if the owner of the dog neglects or refuses to do so, the owner of the dog, in the event of any further damage being done to the person or property of any person by the dog, in addition to paying the person injured for the damage, shall pay the costs of the trial together with the penalty imposed under section 142-12, and it shall be lawful for any other person to destroy the dog.

(b) Each county may enact and enforce ordinances regulating persons who own, harbor, or keep any dog that has injured, maimed, or destroyed an animal belonging to another person. No ordinance enacted under this subsection shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that the ordinance shall not affect the civil liability of a person owning, harboring, or keeping the dog. Upon enactment of an

ordinance, whether enacted on, before, or after June 30, 2001, the ordinance shall have full force and effect; provided that the ordinance is consistent with this section.”

SECTION 2. Section 142-75, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~142-75] Human bitten by dog; duty of dog owners; action against owner. (a) The owner of any dog [~~which~~] that has bitten a human being shall have the duty to take such reasonable steps as are necessary to prevent the recurrence of such incident.

(b) Whenever a dog has bitten a human being on at least two separate occasions for which none of the exceptions specified in section 663-9.1 apply, any person may bring an action against the owner of [~~such~~] the dog in the district court of the judicial circuit in which [~~such~~] the owner resides, to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by such animal. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including[~~;~~] but not limited to[~~;~~] the removal of the animal from the area or its destruction by its owner. In making its decision, the court may consider:

- (1) [~~the~~] The vicious or dangerous propensities of the animal[~~;~~];
- (2) [~~the~~] The ability of the owner to adequately confine or remove the animal[~~;~~]; and
- (3) [~~the~~] The necessity of any destruction of an animal in light of the health, safety, and welfare of the community.

This section shall not preclude any existing common law remedies.

(c) Each county may enact and enforce ordinances regulating persons who own, harbor, or keep any dog that has bitten, injured, or maimed a person. No ordinance enacted under this subsection shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that the ordinance shall not affect the civil liability of a person owning, harboring, or keeping the dog. Upon enactment of an ordinance, whether enacted on, before, or after June 30, 2001, the ordinance shall have full force and effect; provided that the ordinance is consistent with this section.”

SECTION 3. Any county ordinance enacted before July 1, 2001, consistent with sections 142-74 and 142-75, Hawaii Revised Statutes, as amended by this Act, even though the ordinance is enacted before the effective date of this Act, shall be deemed valid retroactive to the date of enactment of the ordinance.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 30, 2001.

(Approved June 12, 2001.)

ACT 223

H.B. NO. 16

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514E- Time share interest owner referrals. (a) An owner of an interest in a time share plan duly registered under this chapter who is not licensed under chapter 467 and provides the name and address of a prospective purchaser or otherwise refers a prospective purchaser of an interest in the same time share plan to a developer, sales agent, or resale agent of the time share plan shall be exempt from licensing requirements under chapter 467; provided that:

- (1) Any fee paid to the owner shall be in the form of a credit or other nonmonetary compensation and shall not exceed \$1,000 per project during any twelve-month calendar period;
- (2) The owner shall be limited to providing the name and address of the prospective purchaser and the owner shall not advertise or promote the time share plan or the referral provided to developers, sales agents, or resale agents under this section; and
- (3) The developer, sales agent, or resale agent shall provide the owner who received a referral fee with a written receipt that identifies and provides the value of the compensation given.

(b) Nothing in this chapter or in chapter 467, including section 467-14(14), shall be construed to prohibit or prevent a developer, sales agent, or resale agent from entering into a transaction with a time share interest owner pursuant to this section.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 224

H.B. NO. 79

A Bill for an Act Relating to Real Property Disclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 508D-1, Hawaii Revised Statutes, is amended by amending the definitions of “disclosure statement” and “material fact” to read: ““Disclosure statement” means a written statement prepared by the seller or at the seller’s direction, that purports to fully and accurately disclose all material facts relating to the residential real property being offered for sale that:

- (1) Are within the knowledge or control of the seller;
- [(2) Are disclosed by documents recorded in the bureau of conveyances; or
- (3)] (2) Can be observed from visible, accessible areas[-]; or
- (3) Are required to be disclosed under section 508D-15.

Except for the disclosures required under section 508D-15, no seller shall have any duty to examine any public records when preparing a disclosure statement.

“Material fact” means any fact, defect, or condition, past or present, [~~which materially affects~~] that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale. The disclosure statement shall not be construed as a substitute for any expert inspection, professional advice, or warranty that the buyer may wish to obtain.”

SECTION 2. Section 508D-3, Hawaii Revised Statutes, is amended to read as follows:

“§508D-3 Exemptions. This chapter shall not apply to the following sales of residential real property:

- (1) Sale to a co-owner;
- (2) Sale to a spouse, parent, or child of the seller;
- (3) Sale by devise, descent, or court order;
- (4) Sale by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition, or any transfer to a seller’s creditor incident to a deed (or assignment) in lieu of foreclosure, workout, or the settlement or partial settlement of any preexisting obligation of a seller owed a creditor and any later sale of residential real property by such creditor;
- (5) Sale by a lessor to a lessee resulting from conversion of leased land to fee simple;
- (6) Initial sale of new residential real property pursuant to chapter 484 under a current public offering statement or chapter 484 exemption;
- ~~[(7) Sale where the seller is an absentee owner who has complied with the requirements of section 508D-10;~~
- ~~[(8)]~~ (7) Sales of condominium apartments accompanied by delivery of an unexpired public report; or
- ~~[(9)]~~ (8) Sale of time share interests as defined under chapter 514E.”

SECTION 3. Section 508D-6, Hawaii Revised Statutes, is amended to read as follows:

“§508D-6 Later discovered inaccurate information. Prior to closing the real estate purchase contract, a buyer who receives a disclosure statement that fails to disclose a material fact or contains an inaccurate assertion [~~which materially~~] that directly, substantially, and adversely affects the value of the residential real property, and who was not aware of the foregoing failure or inaccuracy, may elect in writing to rescind the real estate purchase contract within fifteen calendar days of the earlier to occur of [~~(1) the discovery thereof, or (2) the~~]:

- (1) The discovery of the failure or inaccuracy; or
- (2) The receipt of an amended disclosure statement correcting the [foregoing] failure or inaccuracy, in the manner provided by section 508D-5(b) or (c).

The buyer’s right to rescind the real estate purchase contract under this section shall not apply if the sale of the residential real property has been recorded; provided that the buyer may pursue all additional remedies provided by law.”

SECTION 4. Section 508D-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the seller’s agent is or becomes aware of any material facts inconsistent with or contradictory to the disclosure statement or the inspection report of a

third party[;] provided by the seller, the seller's agent shall disclose these facts to the seller, the buyer, and ~~[their agents.]~~ the buyer's agent. Nothing in this chapter precludes all other obligations of the seller's or the buyer's agent under Hawaii law."

SECTION 5. Section 508D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A seller or the seller's agent shall prepare the disclosure statement in good faith and with due care. A buyer shall have no cause of action against a seller or seller's agent for, arising out of, or relating to the providing of a disclosure statement when the disclosure statement is prepared in good faith and with due care. For purposes of this section, "in good faith and with due care" includes honesty in fact in the investigation, research, and preparation of the disclosure statement and may include information on the following:

- (1) Facts based on only the seller's personal knowledge;
- (2) Facts provided to the seller by governmental agencies and departments;
- (3) Existing reports prepared for the seller by third-party consultants, including without limitation a:
 - (A) Licensed engineer;
 - (B) Land surveyor;
 - (C) Geologist;
 - (D) Wood-destroying insect control expert; or
 - (E) Contractor, or other home inspection expert; dealing with matters within the scope of the professional's license or expertise for the purpose of the disclosure statement;
- ~~[(4) An approximation of the information, when sufficient information regarding material facts is not available to the seller, and the seller or seller's agent makes reasonable efforts to ascertain the information; provided the approximation is:~~
 - ~~(A) Clearly identified as an approximation;~~
 - ~~(B) Reasonable;~~
 - ~~(C) Based on the best information available to the seller or seller's agent;~~
 - ~~(D) Not used for the purpose of circumventing or evading the requirements of this chapter; and~~
- ~~(5)] and~~
- (4) Facts provided to the seller by a managing agent of a homeowner's association, including without limitation, a condominium, cooperative, or community association.

Notwithstanding this subsection, a seller or seller's agent shall be under no obligation to engage the services of any person in the investigation, research, or preparation of the disclosure statement. The failure to engage the services of any such person for this purpose shall not be deemed an absence of good faith or due care by the seller or the seller's agent in the investigation, research, or preparation of the disclosure statement."

SECTION 6. Section 508D-11, Hawaii Revised Statutes, is amended to read as follows:

"§508D-11 Disclosure form. In addition to the other information required by this chapter, the form for the disclosure statement shall include the following:

- (1) A notice to the buyer that the buyer may wish to obtain professional advice and inspections of the residential real property;

- (2) A notice to the buyer that the information contained in the disclosure statement is the representation of the seller and not the representation of the seller's agent (except as to those representations, if any, specifically identified as being made by the seller's agent(;) and not by the seller); and
- (3) A notice of the buyer's rescission rights pursuant to this chapter."

SECTION 7. Sections 508D-13 to 508D-15, Hawaii Revised Statutes, are amended to read as follows:

"§508D-13 Later material facts. Information in a disclosure statement that has not been disclosed or becomes inaccurate regarding a material fact as a result of an act, agreement, or occurrence (or otherwise becomes known to seller) after the statement is provided to the buyer does not violate this chapter. However, if such information [~~materially~~] directly, substantially, and adversely affects the value of the residential real property, the seller shall provide an amended disclosure statement to the buyer disclosing the material fact within ten calendar days after the seller's discovery of such information if the seller discovers such information prior to the recorded sale of the residential real property, and in any event, no later than twelve noon of the last business day prior to the recorded sale of the real property. The buyer shall have fifteen calendar days to examine the amended disclosure statement and, if the buyer was not already aware of such information, [~~may~~] to rescind the real estate purchase contract in accordance with section [508D-5.] 508D-5(b) or (c). The buyer's right to rescind the real estate purchase contract under this section shall not apply if the sale of the residential real property has been recorded; provided that the buyer may pursue all additional remedies provided by law.

§508D-14 Additional disclosure requirements. The requirements of this chapter are in addition to all other disclosure obligations of the seller required by law relating to the sale of residential real property.

§508D-15 Notification required; ambiguity. (a) When residential real property lies:

- (1) Within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the United States Department of Housing and Urban Development for the purposes of determining eligibility for emergency flood insurance programs;
- (2) Within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport;
- (3) Within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities; or
- (4) Within the anticipated inundation areas designated on the department of defense's civil defense tsunami inundation maps;

subject to the availability of maps that designate the four areas by tax map key (zone, section, parcel), the seller shall include such material fact information in the disclosure statement provided to the buyer subject to this chapter. Each county shall provide, where available, maps of its jurisdiction detailing the four designated areas specified in this subsection. The maps shall identify the properties situated within the four designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this

section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee.

(b) When it is questionable whether residential real property lies within any of the designated areas referred to in subsection (a) due to the inherent ambiguity of boundary lines drawn on maps of large scale, the ambiguity shall be construed in favor of the seller; provided that a good faith effort has been made to determine the applicability of subsection (a) to the subject real property.

(c) Except as required under subsections (a) and (b), the seller shall have no duty to examine any public record when preparing a disclosure statement.”

SECTION 8. Section 508D-10, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 225

H.B. NO. 118

A Bill for an Act Relating to Family Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are currently approximately ninety thousand children four years of age or younger in Hawaii. National and local data suggest that a minimum of fifty-eight thousand young children are being cared for by someone other than a parent. On Oahu alone, there are currently only fourteen thousand preschool spaces available and a maximum of one thousand six hundred forty-four licensed family child care spaces in two hundred seventy-four licensed family child care homes. Hawaii must expand the availability of quality family child care providers who offer a necessary and valuable service to our families. However, if unnecessary requirements prevent the expansion of regulated family child care homes, more and more parents will be forced to choose providers that are not regulated, or monitored, and thereby lack assurances of a nurturing environment with basic health and safety compliance.

Child care centers that serve over twenty children are not required to have more than a \$1,000,000 insurance policy. This should also be sufficient for family child care providers who, by law, can only serve six children. Family child care provides a vital service to our communities and to our families with very young children.

SECTION 2. Section 502C-2, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

“(b) Every family child care home located in a townhouse project shall give the association written notice of intent to commence operation as a family child care home no later than ninety days prior to commencing operation. Family child care homes that fail to give such written notice shall not commence operation. Any family child care home existing on July 2, [1999] 2001, shall notify the association within sixty days of July 2, [1999:] 2001, if the home has not previously done so.

The notification does not need to be notarized. If a family child care home commences or continues operation without providing [such] notice within the prescribed time limit required under this section:

- (1) The association shall be absolved of any and all liability for the operation of the family child care home; and
- (2) The family child care home shall indemnify, save, and hold the association harmless from and against all claims and actions and all costs and expenses arising from the operation of the family child care home.

(c) A family child care home located in a townhouse project shall comply with the Equal Opportunity for Individuals with Disabilities Act (Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended)[; provided that any improvements or remodeling made to the particular apartment or unit out of which the family child care home operates, or to the corresponding common elements, to comply with the Americans with Disabilities Act as it applies to the family child care home, shall be made and paid for by the operator of the family child care home. If the Americans with Disabilities Act requires that establishment of a family child care home requires modifications or improvements]. The family child care operator shall be responsible for all physical modifications to the premises, both within the unit and in the common areas, that are readily achievable, and that would allow for the full participation of a child or parent with a physical disability, unless other site arrangements were made and were equally effective. If modifications or improvements are required to the common elements, the operator of the family child care home shall obtain approval of the modifications or improvements from the association before undertaking any construction[-] and the operator of the family child care home shall pay for any such modification.

For the purposes of this subsection, “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense.

(d) An association may authorize the use of an apartment or unit as a family child care home by obtaining the approval of a majority of the owners of the condominium project or planned community, where majority is defined in the association bylaws or other association documents, or by any other method specified in the association bylaws or other association documents. The family child care home authorized shall be subject to [any conditions and limitations approved by the majority of the owners of the condominium project or planned community, or approved by any other method specified in the association bylaws or other association documents.] the declaration, by-laws, house rules, and any amendments pertaining to the condominium project or planned community; provided that any declaration, by-law, or house rule provision prohibiting or limiting the use of the apartment unit for family child care purposes shall be invalid.

(e) An association may:

- (1) Impose conditions on the establishment or operation of a family child care home that are necessary for association immunity from liability under section 663-1.53, including:
 - (A) Requiring the family child care home to comply with the Americans with Disabilities Act;
 - (B) Limiting the number of apartments or units used as a family child care home to no less than one per cent, and no more than three per cent, of the total number of apartments or units in any townhouse project;
 - (C) Limiting family [f] child[] care homes that may be established to those operated by an owner-occupant; and
 - (D) Restricting family [f] child[] care homes to the fourth or lower floor; and

- (2) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to:
 - (A) Indemnify, hold harmless, and defend the association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home as well as to common elements that are traversed by persons going to and from the family child care home;
 - (B) Reimburse the association for the amount of any increase in the association's liability insurance premiums attributable by the insurer to the operation of the family child care home;
 - (C) Require the parent, guardian, and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the association; provided that this waiver need not be notarized; and
 - (D) Obtain liability insurance to cover the family child care home and the common elements that meets the approval of the association and that names the association as an additional named insured, for liability claims arising solely from the operation of the child care business; provided that:
 - (i) ~~[Policy limits shall be determined in accordance with the declaration;]~~ The policy limit requirement shall not exceed \$1,000,000 in coverage per provider; and
 - (ii) The liability policy of the family child care home shall be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian, or caretaker of a child subject to the care of the family child care home.

In the event that coverage for the family child care home is excluded from the association policy and an alternative source of liability coverage for the same risk or risks is unavailable, the association may prohibit the establishment of the family child care home."

SECTION 3. Act 242, Session Laws of¹ 1999, is amended by amending section 8 to read as follows:

- "SECTION 8. This Act shall take effect upon its approval; provided that:
- (1) Sections 1 and 2 shall apply to child care businesses, family child care homes, condominium projects, planned communities, and townhouses that are in existence as of the effective date of this Act; and
 - (2) This Act shall be repealed on June 30, ~~[2004;]~~ 2005; provided that sections 46-15.35, 346-151, 501-231, and 502-111, Hawaii Revised Statutes, shall be reenacted in the same form in which they existed on the day before the approval of this Act."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2001.

(Approved June 13, 2001.)

Note

1. So in original.

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaiian language college was established at the University of Hawaii at Hilo (UH-Hilo) in 1997 to serve as a focal point for the revitalization of the Hawaiian language in accordance with state constitutional requirements that the study of Hawaiian language be promoted. As can be expected, questions were raised within the University of Hawaii (UH) about this new college during its beginnings. However, since then, the commitment of the faculty and the progress made by the college have demonstrated its viability and value within the UH system in addition to its special relevance to the community as required by law.

The Hawaiian language college has been constrained in its development by a unique prohibition from receiving general funds for its operations. This prohibition impacts negatively on the ability of the college to grow and also on its ability to bring in additional federal and private funds to UH-Hilo. The college has proven that it can be a relevant part of UH and that it can make meaningful contributions to the community. Therefore, the purpose of this Act is to repeal the prohibition of appropriating general funds to the Hawaiian language college at UH-Hilo.

SECTION 2. Act 315, Session Laws of Hawaii 1997, is amended by amending section 5 to read as follows:

~~“SECTION 5. [Notwithstanding any law to the contrary, general funds shall not be appropriated to fund the continuation of the Hawaiian language college at the University of Hawaii at Hilo if initial funds are deemed inadequate or become unavailable.]~~ The University of Hawaii shall continue to work with the office of Hawaiian affairs, the federal government, and Aha Punana Leo, Inc., to establish additional funding for the needs of the college.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

A Bill for an Act Relating to Fraudulent Claims.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . QUI TAM ACTIONS OR RECOVERY OF
FALSE CLAIMS TO THE COUNTIES**

§46-A Actions for false claims to the counties; qui tam actions. (a) Any person who:

- (1) Knowingly presents, or causes to be presented, to an officer or employee of a county a false or fraudulent claim for payment or approval;
- (2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by a county;
- (3) Conspires to defraud a county by getting a false or fraudulent claim allowed or paid;
- (4) Has possession, custody, or control of property or money used, or to be used, by a county and, intending to defraud a county or wilfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- (5) Is authorized to make or deliver a document certifying receipt of property used, or to be used by a county and, intending to defraud a county, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (6) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of a county that the person knows may not lawfully sell or pledge the property;
- (7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a county; or
- (8) Is a beneficiary of an inadvertent submission of a false claim to a county, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the county within a reasonable time after discovery of the false claim;

shall be liable to the county for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages that the county sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

- (1) Furnished officials of the county responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;
- (2) Fully cooperated with any county investigation of the violation; and
- (3) At the time the person furnished the county with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

the court may assess not less than two times the amount of damages that the county sustains because of the act of the person. A person violating subsection (a), shall also be liable to the county for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than \$500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

"Claim" includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the county provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee,

or other recipient for any portion of the money or property that is requested or demanded.

“Knowing” and “knowingly” means that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

§46-B Civil actions for false claims. The county corporation counsel or county attorney shall investigate any violation under section 46-A. If the corporation counsel or county attorney finds that a person has violated or is violating section 46-A, the corporation counsel or county attorney may bring a civil action under this section.

§46-C Evidentiary determination; burden of proof. A determination that a person has violated this part shall be based on a preponderance of the evidence.

§46-D Statute of limitations. An action for false claims to a county pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 46-A is committed.

§46-E Action by private persons. (a) A person may bring a civil action for a violation of section 46-A for the person and for a county. The action shall be brought in the name of the county. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this part.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the county in accordance with the Hawaii rules of civil procedure. The complaint:

- (1) Shall be filed in camera;
- (2) Shall remain under seal for at least sixty days; and
- (3) Shall not be served on the defendant until the court so orders.

The county may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The county, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the county shall:

- (1) Proceed with the action, in which case the action shall be conducted by the county and the seal shall be lifted; or
- (2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the county may intervene or bring a related action based on the facts underlying the pending action.

§46-F Rights of parties to qui tam actions. (a) If a county proceeds with an action under section 46-E, the county shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:

- (1) The county may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;
- (2) The county may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;
- (3) The court, upon a showing by the county that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the county's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion, impose limitations on the person's participation by:
 - (A) Limiting the number of witnesses the person may call;
 - (B) Limiting the length of the testimony of the witnesses;
 - (C) Limiting the person's cross-examination of witnesses; or
 - (D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the county elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the county so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the county's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the county to intervene at a later date upon showing of good cause.

(d) Regardless of whether the county proceeds with the action, upon motion and a showing by the county that certain actions of discovery by the person initiating the action would interfere with the county's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty-day period upon a motion and showing by the county that the county has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 46-E, the county may elect to pursue its claim through any alternate remedy available to the county, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Regardless of whether the county elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

§46-G Awards to qui tam plaintiffs. (a) If a county proceeds with an action brought by a person under section 46-E, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If the county does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(c) Regardless of whether the county proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 46-A upon which the action was brought, then the court, to the extent the court considers appropriate, may reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 46-A, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the county to continue the action.

(d) If the county does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under section 46-E:

- (1) Against any elected official of the county, if the action is based on evidence or information known to the county. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the county;
- (2) When the person is a present or former employee of the county and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels

and the county failed to act on the information provided within a reasonable period of time; or

- (3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the county, civil suit, or an administrative civil money penalty proceeding in which the county is already a party.

§46-H Jurisdiction. (a) No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by a county corporation counsel or county attorney or the person bringing the action is an original source of the information.

(b) For purposes of this section:

“Original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the county before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

§46-I Fees and costs of litigation. A county shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.”

SECTION 2. The provisions of this Act are not exclusive and are in addition to any other applicable law or remedy. This Act shall be liberally construed and applied to promote the public interest.

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

ACT 228

H.B. NO. 896

A Bill for an Act Relating to the Revised Uniform Commercial Code Article 9 - Secured Transactions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 241, Session Laws of Hawaii 2000, section 1, is amended by adding a new section 490:9-707, Hawaii Revised Statutes, to read as follows:

“§490:9-707 Amendment of pre-effective-date financing statement. (a) In this section, “pre-effective-date financing statement” means a financing statement filed before this article takes effect.

(b) After this article takes effect, a person may add or delete collateral covered by, continue, or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However,

the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this article takes effect only if:

- (1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 490:9-501;
- (2) An amendment is filed in the office specified in section 490:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 490:9-706(c); or
- (3) An initial financing statement that provides the information as amended and satisfies section 490:9-706(c) is filed in the office specified in section 490:9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 490:9-705(d) and (f) or 490:9-706.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this article takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 490:9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.”

SECTION 2. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-102, Hawaii Revised Statutes, as follows:

1. By amending the definition of “chattel paper” to read:

““Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include [charters];

- (1) Charters or other contracts involving the use or hire of a vessel[-]; or
- (2) Records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.”

2. By amending the definition of “original debtor” to read:

““Original debtor”, except as used in section 490:9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 490:9-203(d).”

3. By amending the definition of “proceeds” to read:

““Proceeds”, except as used in section 490:9-609(b), means the following property:

- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) Whatever is collected on, or distributed on account of, collateral;
- (3) Rights arising out of collateral;

- (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.”

SECTION 3. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (d) of section 490:9-311, Hawaii Revised Statutes, to read as follows:

“(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling [~~or leasing~~] goods of that kind, this section does not apply to a security interest in that collateral created by that person [~~as debtor~~].”

SECTION 4. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-317, Hawaii Revised Statutes, to read as follows:

- “(a) A security interest or agricultural lien is subordinate to the rights of:
- (1) A person entitled to priority under section 490:9-322; and
 - (2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time [the]:
 - (A) The security interest or agricultural lien is perfected; or
 - (B) One of the conditions specified in section 490:9-203(b)(3) is met and a financing statement covering the collateral is filed.”

SECTION 5. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (b) of section 490:9-406, Hawaii Revised Statutes, to read as follows:

- “(b) Subject to subsection (h), notification is ineffective under subsection (a):
- (1) If it does not reasonably identify the rights assigned;
 - (2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or
 - (3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (A) Only a portion of the account, chattel paper, or [~~general~~] payment intangible has been assigned to that assignee;
 - (B) A portion has been assigned to another assignee; or
 - (C) The account debtor knows that the assignment to that assignee is limited.”

SECTION 6. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-509, Hawaii Revised Statutes, to read as follows:

“(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) The debtor authorizes the filing in an authenticated record[;] or pursuant to subsection (b) or (c); or
- (2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.”

SECTION 7. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (d) of section 490:9-513, Hawaii Revised Statutes, to read as follows:

“(d) Except as otherwise provided in section 490:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 490:9-510, for purposes of sections 490:9-519(g), 490:9-522(a), and 490:9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.”

SECTION 8. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-608, Hawaii Revised Statutes, to read as follows:

“(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

- (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under [this] section 490:9-607 in the following order to:
 - (A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney’s fees and legal expenses incurred by the secured party;
 - (B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
 - (C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder’s demand under paragraph (1)(C).
- (3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under [this] section 490:9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
- (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.”

SECTION 9. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-613, Hawaii Revised Statutes, to read as follows:

“§490:9-613 Contents and form of notification before disposition of collateral: general. Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (A) Describes the debtor and the secured party;
 - (B) Describes the collateral that is the subject of the intended disposition;
 - (C) States the method of intended disposition;
 - (D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - (E) States the time and place of a public [sale] disposition or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
 - (A) Information not specified by that paragraph; or
 - (B) Minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in section 490:9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

TO: _____ [Name of debtor, obligor, or other person to which the notification is sent]

From: _____ [Name, address, and telephone number of secured party]

Name of Debtor(s): _____ [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the _____ [describe collateral] _____ [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the _____ [describe collateral] _____ privately sometime after _____ [day and date] _____.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$_____]. You may request an accounting by calling us at _____ [telephone number] _____.

[End of Form]^{1”}

SECTION 10. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-615, Hawaii Revised Statutes, to read as follows:

“(a) A secured party shall apply or pay over for application the cash proceeds of disposition under section 490:9-610 in the following order to:

- (1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- (3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
 - (B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed."

SECTION 11. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (c) of section 490:9-615, Hawaii Revised Statutes, to read as follows:

"(c) A secured party need not apply or pay over for application noncash proceeds of disposition under ~~[this section]~~ section 490:9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner."

SECTION 12. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-625, Hawaii Revised Statutes, as follows:

1. By amending subsection (b) to read:

"(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply ~~[with a request under section 490:9-210]~~ may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing."

2. By amending subsection (g) to read:

"(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 490:9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure."

SECTION 13. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (b) of section 490:9-702, Hawaii Revised Statutes, to read as follows:

"(b) Except as otherwise provided in subsection (c) and sections 490:9-703 through ~~[490:9-708:]~~ 490:9-709:

- (1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this article takes effect, and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties, and interests flowing from those transactions and liens, remain valid after this article takes effect; and
- (2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect."

SECTION 14. Act 241, Session Laws of Hawaii 2000, section 1, is amended by redesignating sections 490:9-707 and 490:9-708 enacted in that Act, as sections 490:9-708 and 490:9-709, respectively, for the addition of the new section 490:9-707 made by section 1 of this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken except that bracketed instructions in the form and the “end of form” notation in section 490:9-613, Hawaii Revised Statutes, as set forth in section 9 of this Act shall not be repealed and the brackets shall be set forth as part of the form. New statutory material is underscored,² except that the underscoring in the form in section 490:9-613, Hawaii Revised Statutes, as set forth in section 9 of this Act, is not indicating new statutory material and shall be set forth as part of the form.

SECTION 16. This Act shall take effect on June 30, 2001.

(Approved June 13, 2001.)

Notes

1. “[End of Form]” should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 229

H.B. NO. 945

A Bill for an Act Relating to Social Work.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§467E- Privileged communication. Communications between registered clinical social workers and their clients shall be treated in the same manner as provided for psychologist-client privilege under rule 504.1 of the Hawaii Rules of Evidence.”

SECTION 2. Section 467E-1, Hawaii Revised Statutes, is amended by amending the definition of “practice of social work” to read:

““Practice of social work” means applying the formal knowledge base, theoretical concepts, specific functional skills, and essential social values that are used to effect change in human behavior, emotional responses, and social conditions, and helping individuals, couples, families, groups, and community organizations enhance or restore their capacities for personal and social functioning and preventing and controlling social problems. Social work practice is the professional application of social work values, principles, and techniques in the following areas:

- (1) Information, resource identification and development, and referral services;
- (2) Preparation and evaluation of psychosocial assessments and development of social work service plans;
- (3) Case management, coordination, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;
- (4) Administration, development, implementation, and evaluation of social work programs and policies;

- (5) [~~Clinical diagnosis, treatment,~~] Treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders;
- (6) Social work consultation; [or]
- (7) Research through the formal organization and methodology of data collection and the analysis and evaluation of social work data practice[-]; or
- (8) Clinical diagnosis or psychotherapy, or both, only if the practitioner is a licensed social worker who initially and triennially registers with the department and is granted permission to use the designation "C.S.W." or "clinical social worker" after providing proof of current certification by:
 - (A) The National Association of Social Workers as a qualified clinical social worker or diplomate in clinical social work; or
 - (B) The American Board of Examiners in Clinical Social Work as a board certified diplomate."

SECTION 3. Section 467E-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall:

- (1) Use in connection with the person's name any designation tending to imply that the person is a licensed social worker unless the person is duly licensed and authorized under this chapter; [or]
- (2) Represent oneself as a licensed social worker during the time the person's license issued under this chapter is forfeited, terminated, suspended, or revoked[-]; or
- (3) Perform clinical diagnosis or psychotherapy unless the person is:
 - (A) A licensed social worker; and
 - (B) Registered as a clinical social worker as provided by paragraph (8) of the definition of "practice of social work" in section 467E-1."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon approval and shall be repealed on January 1, 2003.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 230

H.B. NO. 986

A Bill for an Act Relating to Identification Documents.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§710- Sale or manufacture of deceptive identification document; penalties. (1) A person commits the offense of sale or manufacture of deceptive

identification document if the person intentionally or knowingly manufactures, sells, offers for sale, furnishes, offers to be furnished, transports, offers to be transported, or imports or offers to be imported into this State a deceptive identification document.

(2) As used in this section, “deceptive identification document” means any identification document not issued by a governmental agency that purports to be, or that might deceive a reasonable person into believing that it is, an identification document issued by a governmental agency, including a driver’s license, identification card, birth certificate, passport, or social security card.

(3) The sale or manufacture of a deceptive identification document is a class C felony.

(4) Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this section, or that facilitated or assisted such activity, shall be subject to forfeiture under chapter 712A.”

SECTION 2. Section 286-131, Hawaii Revised Statutes, is amended to read as follows:

“§286-131 Unlawful use of license. No person shall:

- (1) Display or permit to be displayed or have in the person’s possession any canceled, revoked, suspended, fictitious, or fraudulently altered driver’s license;
- (2) Lend the person’s driver’s license to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one’s own any driver’s license not issued to the person;
- (4) Fail or refuse to surrender to the examiner of drivers, upon the examiner’s lawful demand, any driver’s license that has been suspended, revoked, or canceled;
- (5) Use a false or fictitious name in any application for a driver’s license or knowingly make a false statement or knowingly conceal a material fact, or otherwise commit a fraud in any such application; or
- (6) [~~Manufacture, sell, distribute, use,~~] Use or have in the person’s possession any reproduction, imitation, or facsimile of any driver’s license or any identification with the appearance of a driver’s license.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Submission of Reports to the Legislature.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that at present, it has no means by which to systematically track and monitor the submission of reports that are required by law or legislative request. While it might not be difficult to determine whether a particular report was submitted, there is no way to ascertain compliance by agencies as a whole.

The purpose of this Act is to improve legislative oversight over the executive and judicial branches of government by establishing a system through which the legislature and the public will be better able to track and monitor the submission of annual and other reports.

SECTION 2. Chapter 1, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§1- Publication and distribution of reports. (a) Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to submit a report to the legislature, the report shall be:

- (1) Available in printed form;
- (2) Submitted in printed form to the president of the senate, the speaker of the house of representatives, and the legislative reference bureau library; and
- (3) Posted on the designated central State of Hawaii website; or
- (4) Posted on the Internet in an easily-located manner.

(b) If a government agency submits a report to the legislature that is a consolidation of reports mandated by law of that agency or other agencies that are administratively attached to the government agency submitting the consolidated report, then the agency submitting the consolidated report shall include:

- (1) A listing of each mandated report that is being included in the consolidated report; and
- (2) The specific time period covered by the particular government agency’s report if different from the time period covered by the consolidated report.

(c) For purposes of this section, “government agency” means the judiciary and each department, board, commission, or officer of the State or any of its political subdivisions.”

SECTION 3. Chapter 23G, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§23G- Annual and other reports to be submitted to legislature; tracking, monitoring, reporting, coordination. The legislative reference bureau shall develop a system to track and monitor the submission of reports to the legislature by executive agencies and the judiciary. The system shall encompass all annual and other reports required by law to be submitted to the legislature, or requested by legislative resolution.”

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 232

H.B. NO. 1231

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Mediation. If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners’ declaration, bylaws, or house rules, or involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, or 514A-84.5, the other party in the dispute shall be required to participate in mediation. If an owner or the board refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney’s fees in accordance with section 514A-94.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 233

H.B. NO. 1255

A Bill for an Act Relating to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Expungement orders. (a) The court may issue an order expunging an arrest record of a minor upon written application by the minor or the minor’s parent or guardian, where the arrest was made pursuant to section 571-11(1) or (2) and the arrest record meets the following criteria:

- (1) The matter was not referred to the prosecuting attorney or the family court and the person arrested was not counseled and released by the police; or
- (2) The matter was referred to the prosecuting attorney or family court and:
 - (A) The person arrested was not adjudicated responsible; or
 - (B) The matter was dismissed with prejudice.

(b) Before issuing an order to expunge an arrest record that falls under subsection (a)(1), the court shall consult with appropriate law enforcement agencies to determine if there is any reason to retain the arrest record.

(c) The court shall issue an order expunging the arrest record of an adult, which was incurred while the adult was a minor, upon written application of the adult where:

(1) The arrest was made pursuant to section 571-11(1) or (2); and

(2) The arrest record meets the criteria under subsection (a).

Upon issuance of the order of expungement, the court shall forward copies and issue a certificate pursuant to subsection (d). Subsection (b) shall not apply to expungement orders under this subsection.

(d) Upon issuance of an expungement order under this section, the court shall:

(1) Forward copies of the expungement order to the police department and the department of the attorney general for expungement of the arrest record; and

(2) Issue to the person for whom the expungement order was issued, a certificate stating that an expungement order was issued and that its effect is to annul the record of one or more specific arrests. The certificate shall:

(A) Authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest; and

(B) State that the person shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for making any statement authorized by the certificate.

(e) A person whose arrest record has been expunged pursuant to subsection (a) or (c) shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for responding to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest expunged.

(f) As used in this section:

“Arrest record” means any record maintained by a county police department or the department of the attorney general under section 846-2.5(b) and chapters 846 and 846D, relating to the arrest of the minor for a specific offense, including fingerprints taken during the arrest and maintained under section 846-2.5(b).

“Expunge” means a process defined by agency policy in which records are segregated and kept confidential, or destroyed.”

SECTION 2. Section 571-72, Hawaii Revised Statutes, is amended to read as follows:

“§571-72 Duties and powers; reports[-]; expungement of juvenile arrest records.¹ (a) The juvenile ~~[crime prevention bureau]~~ division or section shall direct its attention specifically to the suppression, prevention, and investigation of crimes committed by children under the age of eighteen years, and any police officer shall have the power and authority to take and detain any minor coming under² section 571-11 at the ~~[bureau]~~ division or section or other suitable places for questioning and investigation. If it appears upon conclusion of the investigation that the minor does come within such provisions, the minor may be counseled and released, and follow-up counseling provided or the minor may be referred to the family court or to a proper agency for treatment, and a written report of the findings of the officer shall be submitted to the court or³ agency.

(b) Upon receipt of an expungement order issued by the family court under section 571- , the police shall expunge the arrest record of the minor.”

SECTION 3. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The records of any police department[,] and of any juvenile [~~crime prevention bureau~~] division or section thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection and use only by persons whose official duties are concerned with this chapter, except as provided in subsections (d) and (f), sections 571- and 571-72(b), or as otherwise ordered by the court.”

SECTION 4. Section 846D-1, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~846D-1] Responsibility for system. (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all juvenile justice custodial, adjudicative, and program data from all agencies [~~which~~] that have primary investigative, action, or program responsibility for minors, including the county police departments, the county prosecutors, the family courts, and the Hawaii youth correctional facilities, in such a manner as to balance the right of the public and press to be informed and the right of privacy and confidentiality of minors and their families, and to provide accurate, comprehensive, and timely information to government agencies concerned with juvenile offenders to carry out their responsibilities.

(b) The information collected and stored in the juvenile justice information system shall not include any fingerprints, psychiatric reports, or social and clinical studies or examinations, but may contain information indicating the availability of reports and the procedures for requesting such information.

(c) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information and obtaining the agreement of agencies permitted to directly input and access information.

(d) Upon receipt of an expungement order issued by the family court under section 571- , the attorney general shall expunge the arrest record of the minor.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 6. This Act shall take effect on August 1, 2001.

(Approved June 13, 2001.)

Notes

1. Period should be underscored.
2. Prior to amendment “within” appeared here. “Under” should be underscored.
3. Prior to amendment “the” appeared here.
4. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that for Hawaii to be competitive globally, it must diversify its economic base beyond reliance on tourism and revenues provided by the federal government. A revived state agricultural industry holds the promise of not only diversifying Hawaii's economy, but also preserving the green space and lifestyle that Hawaii's citizens and visitors value.

The legislature further finds that diversified agriculture is gaining value and can become a significant component of the State's economy. Sixty-four per cent of the farm-gate value of agriculture in Hawaii in 1999 was derived from crops other than sugarcane and pineapple. By comparison, only twenty-seven per cent of the farm-gate value in the 1980s was attributable to diversified agriculture.

The legislature further finds that the University of Hawaii college of tropical agriculture and human resources (UH-CTAHR) is engaged in several areas of research and outreach that already have contributed materially to the resurgence of agriculture in Hawaii. Among UH-CTAHR's contributions to the State's agricultural industry are:

- (1) Identifying and developing high-value food and fiber products so that Hawaii can stay competitive in a global market;
- (2) Research that advances agricultural biotechnology, an industry that has the potential to bring billions of dollars to the State's economy; and
- (3) Creating and encouraging the adoption of environmentally sound agricultural practices such as "bioremediation" which allows for cleanup of sites contaminated by heavy metals.

The legislature further finds that more work needs to be done to develop high-value products including:

- (1) New and improved plant varieties;
- (2) Effective and environmentally sound pest, disease, and nutrient management systems;
- (3) New and improved bioprocess technologies;
- (4) More sophisticated market information systems;
- (5) Plant varieties that are resistant to disease and tolerant to pesticides and which produce high-value chemicals, fragrances, vaccines, or specific nutrients;
- (6) Flowers with engineered colors;
- (7) Plants resistant to environmental stress;
- (8) Fruits that ripen on demand; and
- (9) Technologies that implement bioremediation to solve environmental problems.

To sustain Hawaii's diverse yet fragile ecosystems, it is important that sound agricultural, land, and water use practices be developed. There is also a need for more comprehensive land and water use analyses to help shape policies to sustain Hawaii's precious environment.

The purpose of this Act is to appropriate funds to the University of Hawaii to enable UH-CTAHR to conduct these crucial research and outreach activities. The appropriations in this Act reflect funds over and above the funds appropriated by the legislature for the University of Hawaii in the executive budget.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year

2001-2002 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 as follows:

- (1) \$200,000 per year for the continued development of high-value agricultural products and a breeding program to provide new agricultural products;
- (2) \$200,000 per year for the continued development of the agricultural biotechnology initiative; and
- (3) \$100,000 per year for the creation and adoption of agricultural management practices that protect Hawaii's environment;

provided that the sums appropriated in this Act shall reflect funds over and above the funds appropriated by the legislature to the University of Hawaii in the executive budget.

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 13, 2001.)

ACT 235

H.B. NO. 1339

A Bill for an Act Relating to Water Supply Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 46-141, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
~~““Board” means the board of water supply or water board of any county.”~~

2. By amending the definition of “impact fees” to read:

~~““Impact fees” means the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.”~~

SECTION 2. Section 46-142, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [The counties are authorized to assess, impose, levy, and collect impact fees for any development within their jurisdictions; provided that no impact fees may be assessed, imposed, or collected under this part unless the county enacts appropriate impact fee ordinances and adopts rules to effectuate the imposition and collection of the fees.]~~

Impact fees may be assessed, imposed, levied, and collected by:

- (1) Any county for any development, or portion thereof, not involving water supply or service; or
- (2) Any board for any development, or portion thereof, involving water supply or service;

provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.”

SECTION 3. Section 46-143, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) A county council or board considering the enactment or adoption of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.”

2. By amending subsections (c) and (d) to read:

“(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred by the county~~[-]~~ or board.

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred by the county or the board in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
 - (A) Deficiencies in existing public facilities;
 - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
 - (C) Additional demands anticipated to be placed on specified public facilities by a development;
- (2) The availability of other funding for public facility capital improvements, including~~[-]~~ but not limited to~~[-]~~ user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
- (3) The cost of existing public facility capital improvements;
- (4) The methods by which existing public facility capital improvements were financed;
- (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
- (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
- (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.”

SECTION 4. Section 46-144, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§46-144**~~]]~~ **Collection and expenditure of impact fees.** Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. ~~[In order to]~~

To determine whether the fees are reasonably related, the impact fee ordinance or board rule shall provide that:

- (1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;
- (2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county or board shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county[-] or board. A county or board shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;
- (3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;
- (4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and
- (5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development.”

SECTION 5. Section 46-145, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If impact fees are not expended or encumbered within the period established in section 46-144, the county or the board shall refund to the developer or the developer’s successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county or the board within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and be expended as provided in section 46-144.

(b) If a county or board seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county or board shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to [the]:

- (1) The county’s general fund and expended for any public purpose not involving water supply or service as determined by the county council[-]; or
- (2) The board’s general fund and expended for any public purpose involving water supply or service as determined by the board.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the realignment of Saddle Road on the island of Hawaii, may affect the habitat of the palila, which thrives in the mamane forests along the upper elevations of Mauna Kea. As a result, the federal government has identified a site that could provide the palila with an alternative habitat. However, the designated land is currently under long-term state leases to four cattle ranchers. To date, ongoing discussions between the department of land and natural resources and the ranchers have not resulted in any alternatives that the ranchers believe would fairly compensate them for the withdrawn lands. This has included the provisions of section 171-37(3), Hawaii Revised Statutes, which specifies reduced rents and compensation for the loss of permanent improvements.

The legislature finds that providing a statutory exception to state land leasing policies is not an appropriate solution to this problem.

Therefore, the purpose of this Act is to direct the department of land and natural resources to expedite discussions with the ranchers and to consider all means of fairly compensating them for the withdrawn lands, and to authorize the lessees to utilize ten per cent of remaining land for alternative agriculture use at no increase in the lease rent rate.

SECTION 2. The department of land and natural resources shall expedite discussions with representatives from Parker Ranch, K.K. Ranch, Inc., S.C. Corporation, and Boteilho Ent., Inc. to identify and investigate all alternatives that will:

- (1) Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
- (2) Avoid providing exceptions to public land leasing policies.

The department shall also authorize the lessees to utilize ten per cent of remaining land for alternative agriculture use at no increase in the lease rent rate.

The department shall submit a final report on the result of these discussions and any proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2002.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

A Bill for an Act Relating to Condominium Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-31, Hawaii Revised Statutes, is amended to read as follows:

“§514A-31 Notification of intention. (a) Prior to the time when apartments in a condominium project are to be offered for sale in this State, the developer shall register the project with the commission by notifying the commission in writing of the developer’s intention to sell such apartments. No offer of sale or sale shall be

made until the project has been registered with the commission and the commission has issued an effective date for the project's preliminary, contingent final, or final public report.

(b) Prior to the time when a developer offers or proposes to offer for sale a time share plan located in a condominium project where apartments are being offered or proposed to be offered for sale for the first time to the public, the developer shall register the project with the commission and obtain an effective date for the developer's public report; provided that the developer shall not be required to deliver to a prospective purchaser or purchaser a true copy of the developer's public report or disclosure abstract, as required by this chapter, when a time share plan is duly registered under chapter 514E, and for which a disclosure statement under chapter 514E is effective and required to be delivered to the purchaser or prospective purchaser."

SECTION 2. Section 514A-41, Hawaii Revised Statutes, is amended to read as follows:

"§514A-41 Supplementary public report. (a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.

(b) The commission may determine when a supplementary public report will supersede the public reports previously issued for the project.

(c) Notwithstanding the provisions of this section, the rescission rights, if any, of a purchaser shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.

(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser."

SECTION 3. Sections 514A-61 and 514A-62, Hawaii Revised Statutes, are amended to read as follows:

"§514A-61 Disclosure requirements. (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
- (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;

- (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
- (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed-use project containing apartments for both residential and hotel use;
- (5) A statement of the extent of commercial or other nonresidential development in the project.

(b) In the case of a project which includes one or more existing structures being converted to condominium status:

- (1) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
- (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
- (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
- (4) A statement whether the project is on a lot, or has structures or uses, which do not conform to present zoning requirements;

provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

(c) This section shall be administered by the commission. The commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the commission's public report on the project.

(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.

§514A-62 Copy of public report to be given to prospective purchaser. (a)

The developer (or any other person offering any apartment in a condominium project prior to completion of its construction) shall not enter into a contract or agreement for the sale or resale of an apartment [which] that is binding upon any prospective purchaser until:

- (1) The commission has issued an effective date for either a contingent final public report or a final public report on the project, and the developer has delivered, or caused to be delivered, to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, a true copy of either the contingent final public report or the final public report together with a true copy of all prior public reports on the project, if any, [which],¹ that have not been previously delivered to such prospective purchaser; except that such prior public reports need not be delivered to the prospective purchaser if the contingent final public report or the final public report supersedes such prior public reports. If, prior to the entering into of such contract or agreement for sale or resale, the commission [has], subsequent to its issuance of an effective date for the contingent final public report or the

final public report, has issued an effective date for a supplementary public report on the project, then a true copy of such supplementary public report shall also be delivered to such prospective purchaser in the same manner as the contingent final public report or the final public report, except that if the supplementary public report supersedes all prior public reports on the project, then only the supplementary public report need be delivered to the prospective purchaser[.];

- (2) The prospective purchaser has been given an opportunity to read the report or reports; and
- (3) The prospective purchaser (A) executes the form of the receipt and notice set forth in subsection (d); and (B) waives the prospective purchaser's right to cancel; provided that if the prospective purchaser does not execute and return the receipt and notice within thirty days from the date of delivery of such reports, or if the apartment is conveyed to the prospective purchaser prior to the expiration of such thirty-day period, the prospective purchaser shall be deemed to have receipted for the reports and to have waived the prospective purchaser's right to cancel.

(b) The receipts and notices taken hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchase or reservation of an apartment at any time prior to the earlier of:

- (1) The conveyance of the apartment to the prospective purchaser; or
- (2) Midnight of the thirtieth day following the date of delivery of the first of either the contingent final public report or the final public report to such purchaser,

and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

(d) Whenever a contingent final public report, final public report, or supplementary public report is delivered to a prospective purchaser pursuant to subsection (a), two copies of the receipt and notice set out below shall also be delivered to such purchaser, one of which may be used by the purchaser to cancel the transaction. Such receipt and notice shall be printed in capital and lower case letters of not less than twelve-point type on one side of a separate statement. The receipt and notice shall be in the following form:

**“RECEIPT FOR PUBLIC REPORT(S) AND
NOTICE OF RIGHT TO CANCEL**

I acknowledge receipt of the Developer's (Preliminary, Contingent Final, Final, and Supplementary) Public Report(s) and Disclosure Abstract, contained in the public report, in connection with my purchase of apartment(s) (insert apartment numbers) in the (insert name of condominium project) condominium project.

I understand that I have a legal right under Hawaii law to cancel my purchase, if I desire to do so, without any penalty or obligation within thirty days from the date the above Public Report or Reports were delivered to me. If I cancel, I understand that I will be entitled to receive the refund of any downpayment or deposit, less any escrow cancellation fees and other costs, up to \$250.

If I decide to cancel, I understand that I can do so by notifying (insert name of seller) at (insert address of seller) by mail or telegram sent before: (1) the conveyance of my apartment(s) to me; or (2) midnight of the thirtieth day after delivery of the Public Report(s) to me, whichever is earlier. If I send or deliver my written notice some other way, it must be delivered to the above address no later than that time. I understand that I can use any written statement that is signed and dated by me and states my intention to cancel, or I may use this notice by checking the appropriate box and by signing and dating below.

I understand that if I do not act within the above thirty-day period or if the apartment is conveyed to me within the above thirty-day period, I will be considered to have executed this receipt and to have waived my right to cancel my purchase. I also understand that I can waive my right to cancel by checking the appropriate box, by signing and dating below, and by returning this notice to (insert name of seller).
I HAVE RECEIVED A COPY OF:

- (1) THE DEVELOPER'S (PRELIMINARY, CONTINGENT FINAL, FINAL, AND SUPPLEMENTARY) PUBLIC REPORT(S) ON (insert name of condominium project); AND
- (2) THE DISCLOSURE ABSTRACT CONTAINED IN THE PUBLIC REPORT.

Purchaser's signature _____

Date _____

I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S) AND

☐ I WAIVE MY RIGHT TO CANCEL.

☐ I HEREBY EXERCISE MY RIGHT TO CANCEL.

Purchaser's signature _____

Date _____

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the purchaser's receipt of either a contingent final public report or a final public report is enforceable against the purchaser under such agreement.

(f) Where a developer has delivered to a purchaser a contingent final public report and the purchaser has previously waived the purchaser's right to cancel the purchaser's agreement for the purchase or reservation of an apartment pursuant to this section:

- (1) The issuance of an effective date for a final public report prior to the expiration of the contingent final public report shall not affect the enforceability of the purchaser's obligations under the purchaser's agreement for the purchase of an apartment;
- (2) The developer shall not be required to deliver to the purchaser the final public report for the project and receipt and notice set forth in subsection (d); and
- (3) The developer shall promptly deliver to the purchaser a disclosure statement informing them that the commission has issued an effective date for the final public report and containing all information contained in the final public report that is not contained in the contingent final public report.

(g) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E, and for which a

disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.”

SECTION 4. New statutory material is underscored.²

SECTION 5. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Notes

1. Comma should be bracketed.
2. So in original.

ACT 238

S.B. NO. 469

A Bill for an Act Making an Appropriation for Parking for Persons with Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that administration of the program to issue parking placards to qualified persons with disabilities is a state responsibility. The Uniform System for Handicapped Parking, Public Law 100-641, was enacted on November 9, 1988, and established guidelines for the uniform issuance and use of parking placards to persons with disabilities meeting specific eligibility criteria, thereby allowing them to park in stalls designed and reserved for persons with disabilities. The enabling regulations implementing Public Law 100-641, issued by the federal Department of Transportation on March 11, 1991, set guidelines for states to use in establishing a uniform parking system to enhance access and safety of persons with disabilities that limit or impair the ability to walk. The rules establish the parameters for the states to follow, including the design of the placard, definition of eligible persons, issuance of permanent or temporary placards, and issuance of special license plates.

The legislature further finds that the State of Hawaii had a program for the issuance of parking permits to persons with disabilities since 1984 which was implemented in statutory language contained in part III, chapter 291, Hawaii Revised Statutes. With the passage of Public Law 100-641, Hawaii statutes were amended in 1992 and have been amended several times thereafter. Administrative rules to implement the statute were developed under the auspices of the state department of transportation until June 30, 2000. They were transferred to the disability and communication access board on July 1, 2000.

The legislature further finds that the four counties in the State have issued parking placards for persons with disabilities since the inception of the program. Consistent with other functions of traffic control and customer service permitting and licensing, such as issuance of drivers' licenses which the counties have undertaken on behalf of the State, the issuance of parking permits has functionally been integrated into most county offices to the benefit of the public.

The legislature further finds that approximately thirty-three thousand removable windshield placards and temporary removable windshield placards were issued last year by the four counties to qualified persons with disabilities. The counties recovered the marginal administrative costs by charging a fee to applicants to process the issuance of the placards in a manner similar to charging a fee for drivers' licenses and other permits. However, the federal courts have ruled that the imposition of a fee on qualified persons with disabilities is an impermissible surcharge under the Americans with Disabilities Act (*Dare v. State of California*, Case No. 97-56065, filed September 16, 1999 and *Emerick v. City and County of Honolulu*,

Case No 98-16427, filed December 17, 1999). As a result of the courts' rulings, the counties are no longer able to recoup any of the administrative costs related to the issuance of the removable windshield placards.

The legislature further finds that it is in the interest of the State to have the counties continue administering the program on behalf of the State.

The purpose of this Act is to provide an appropriation for the counties to cover the administrative costs of the program in lieu of charging applicants a fee.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$176,000 or so much thereof as may be necessary for fiscal year 2001-2002 as a grant-in-aid to the counties for the administration of the program to issue removable windshield placards for parking to qualified persons with disabilities.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 13, 2001.)

ACT 239

S.B. NO. 525

A Bill for an Act Relating to Textbooks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that textbook shortages are an ongoing problem for schools and may be due to the lack of an effective, centralized management system. The legislature further finds that allowing each school to account for textbooks and charge replacement fees and other fines would help to ameliorate current shortages.

The purpose of this Act is to provide individual schools a framework to establish an effective, accountable system to maintain inventories of textbooks.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Textbook replacement fees, fines. (a) School principals shall recover special fees and charges for lost, damaged, destroyed, or broken books as authorized under section 302A-1130.

(b) All special fees and charges for lost, damaged, destroyed, or broken books shall remain at the school level.

(c) The school principal shall exercise any other supervisory powers that shall be necessary to provide satisfactory recovery and proper care of textbooks on a schoolwide basis as provided by law.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the

prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649; [and]
- (27) High technology special fund under section 206M-15.5; and
- (28) Public schools special fees and charges fund under section 302A-1130(f);

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;

- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees' retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special fund established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649; [and]
- (24) High technology special fund under section 206M-15.5; and
- (25) Public schools special fees and charges fund under section 302A-1130(f);

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 240

S.B. NO. 951

A Bill for an Act Relating to Hate Crimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Crimes and threats against persons because of their race, religion, disability, ethnicity, national origin, or sexual orientation are a significant problem across the nation. The legislature finds that the State's interest in preventing crimes motivated by bigotry and hate goes beyond its interest in preventing other felonies or misdemeanors, and that the protection of Hawaii's citizens from threats of harm due to bigotry and hate is a compelling state interest.

The legislature further finds that Hawaii is one of a distinct minority of states in the nation that do not have laws addressing hate-motivated crimes. Additionally, Hawaii is one of only four states in the country that do not participate in the hate crimes data reporting program created by the federal Hate Crimes Statistics Act.

The purpose of this Act is to:

- (1) Allow extended term sentencing for the perpetrators of hate-motivated crimes; and
- (2) Provide a mechanism to compile, track, and analyze hate crimes data in Hawaii.

SECTION 2. Chapter 846, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HATE CRIME REPORTING

§846- Definitions. As used in this part, the following terms have the following meanings:

“Hate crime” means any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, or sexual orientation of any person.

“Hate crime data” means information, incident reports, records, and statistics relating to hate crimes, collected by the attorney general.

“Incident report” means an account of occurrence of a hate crime received or collected by the attorney general.

“Sexual orientation” means:

- (1) Having a preference for heterosexuality, homosexuality, or bisexuality;
- (2) Having a history of any one or more of these preferences; or
- (3) Being identified with any one or more of these preferences.

§846- Responsibility for system. (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all hate crime data from all agencies that have primary investigative, action, or program responsibility for adult or juvenile offenses, including the county police departments, the county prosecutors, the family courts, and the departments or agencies responsible for administering any correctional facilities.

(b) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information concerning the commission of hate crimes and obtaining the agreement of agencies permitted to directly input and access information.

(c) Hate crime data collected by the attorney general may be shared with other agencies in accordance with section 92F-19. Public dissemination of this information shall be subject to section 92F-13.

§846- Responsibility of agencies. Agencies that have investigative, detention, custodial, adjudicative, or program responsibility for adult or juvenile offenses shall cooperate with the attorney general in establishing the hate crime reporting system by:

- (1) Providing information in the agency files that can be included pursuant to the format approved by the attorney general;
- (2) Maintaining procedures internally consistent with uniform procedures and guidelines provided by the attorney general;
- (3) Reporting information to the attorney general that is timely, complete, and accurate after the occurrence of an event over which the agency had direct responsibility; and
- (4) Maintaining procedures for the periodic checking of information to minimize the possibility of storing and maintaining inaccurate information.

§846- Annual reports. The attorney general shall summarize and analyze reports of hate crimes data that are received, and shall compile and transmit an annual report of hate crime data to the governor, the judiciary, the department of public safety, and the legislature.”

SECTION 3. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

“§706-662 Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
- (2) The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with the Hawaii rules of evidence.
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant’s crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) The defendant is an offender against the [~~elder,~~] elderly, handicapped, or a minor under the age of eight, whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
 - (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
 - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:

- (i) Sixty years of age or older;
 - (ii) Blind, a paraplegic, or a quadriplegic; or
 - (iii) Eight years of age or younger; and
 - (c) Such disability is known or reasonably should be known to the defendant.
- (6) The defendant is a hate crime offender whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
 - (b) The defendant intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, or sexual orientation of any person.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon approval.

(Approved June 13, 2001.)

ACT 241

S.B. NO. 1079

A Bill for an Act Relating to Limited Liability Partnerships.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 425-151, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425-151]]~~ **Name.** The name of a limited liability partnership shall ~~[end with]~~ contain “Registered Limited Liability Partnership”~~[-]~~ or “Limited Liability Partnership”, or the abbreviation “R.L.L.P.”, “L.L.P.”, “RLLP”, or “LLP”.”

SECTION 2. Section 425-154, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425-154]]~~ ~~Amendment of]~~ **Correcting, amending and restating, amending, and restating the statement of qualification**~~[-]; voluntary cancellation.~~ (a) If any statement in the statement of qualification was false when made, or any arrangement of other facts described have changed, making the statement inaccurate in any material respect, the limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director ~~[a statement]~~ articles of correction certified and signed by a partner, correcting the statement of qualification. The articles of correction shall:

- (1) Describe the document including its file date or attach a copy of the document to the articles;

- (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
- (3) Correct the incorrect statement or defective execution.

Articles of correction are effective on the effective date of the document they correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. No person shall have any liability resulting from a failure to file [an amendment] articles of correction to a statement of qualification pursuant to this subsection.

(b) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph (b)(2).

(c) A statement of qualification shall be amended by delivering a statement of amendment of limited liability partnership to the director for filing. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date on which the limited liability partnership's statement of qualification was filed; and
- (3) The amendment to the statement of qualification.

(d) A restated statement of qualification may be executed and filed in the same manner as a statement of amendment. The restated statement of qualification shall set forth all of the operative provisions of the statement of qualification as previously amended[-], together with a statement that the restated statement of qualification correctly sets forth without change the corresponding provisions of the statement of qualification as previously amended, and that the restated statement of qualification supersedes the original statement of qualification and all amendments thereto. The director may certify the restated statement of qualification currently in effect, without including the information required to be set forth in the restatement by this subsection.

(e) An [amendment-to-a] amended, restated, or amended and restated statement of qualification [or restated statement of qualification] shall be effective when filed.

(f) A limited liability partnership validly created under this chapter may voluntarily cancel its limited liability status in an amendment to a statement of qualification."

SECTION 3. Section 425-155, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Status as a limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 [or], revoked pursuant to [F]section[] 425-164[-], or voluntarily canceled pursuant to section 425-154. Cancellation of a statement of qualification [is] shall be effective upon filing.”

SECTION 4. Section 425-156, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter [and], file a statement of foreign qualification with the director[-], and submit a certificate of good standing from the state in which the partnership was formed.”

SECTION 5. Section 425-158, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
 - (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
 - (B) Section [425-153;] 425-151;
- (2) The street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this State, if any;
- (3) The name and street address of the partnership’s agent for service of process; [and]
- (4) The total number of partners on the date the statement is filed[-]; and
- (5) A statement that the partnership elects to be a foreign limited liability partnership.”

SECTION 6. Section 425-159, Hawaii Revised Statutes, is amended to read as follows:

“[§425-159]—Amendment of] Correcting, amending, restating, and amending and restating the statement of foreign qualification[-]; voluntary cancellation. [(a)] If any statement in the statement of foreign qualification was false when made or any arrangement of other facts described have changed making the statement inaccurate in any material respect, the foreign limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director a statement, certified and signed by a partner, correcting the statement of foreign qualification. No person shall have any liability resulting from a failure to file an amendment to a restatement of foreign qualification pursuant to this subsection:

(b) A statement of foreign qualification may be amended at any time for any purpose determined by the partners.

(c) A statement of foreign qualification shall be amended by delivering a statement of amendment of foreign limited liability partnership to the director for filing. The statement shall set forth:

- (1) The name of the foreign limited liability partnership;
- (2) The date on which the foreign limited liability partnership and statement of foreign qualification was filed; and
- (3) The amendment to the statement of foreign qualification.

(d) A restated statement of foreign qualification may be executed and filed in the same manner as a statement of amendment. The restated statement shall set forth all of the operative provisions of the statement as amended.

(e) The amendment to a statement of foreign qualification or restated statement of foreign qualification shall be effective when filed.] (a) A foreign limited liability partnership shall correct, amend, restate, and amend and restate the statement of qualification in the same manner prescribed for domestic limited liability partnerships in section 425-154.

(b) A foreign limited liability partnership validly elected under this chapter may voluntarily cancel its limited liability status in an amendment to a statement of qualification.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2001.

(Approved June 13, 2001.)

ACT 242

S.B. NO. 1082

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-429, Hawaii Revised Statutes, is amended to read as follows:

“§302A-429 ~~[School-to-work work-based]~~ Work-based learning program authorized. To provide students with opportunities to apply knowledge and skills acquired in the classroom to real life work experiences, the department may establish and regulate a ~~[program of school-to-work]~~ work-based learning program under conditions determined by the department and the University of Hawaii.”

SECTION 2. Section 302A-430, Hawaii Revised Statutes, is amended to read as follows:

“§302A-430 Coverage for workers’ compensation. Whenever a student participating in ~~[an approved school-to-work]~~ a school-approved work-based learning program sponsored by the department of education or the University of Hawaii undertakes to perform work for a private employer as part of the student’s work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers’ compensation coverage, ~~[which]~~ that shall be the student’s exclusive remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program.”

SECTION 3. Section 302A-440, Hawaii Revised Statutes, is amended to read as follows:

“§302A-440 Coverage for workers’ compensation~~[-]~~ of an exceptional child. Whenever an exceptional child as defined in section 302A-101 undertakes to perform work for a private employer as part of ~~[an approved school-to-work]~~ a school-approved work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers’ compensation coverage.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

ACT 243

S.B. NO. 1208

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 115, Session Laws of Hawaii 1998, authorized the University of Hawaii to appoint its own attorneys. Based on this authorization, the university has established the office of the senior vice president for legal affairs and university general counsel.

The purpose of this Act is to clarify the role of the Office of the senior vice president for legal affairs and university general counsel (general counsel) by:

- (1) Establishing service of process requirements for the university;
- (2) Specifying the university general counsel, and not the attorney general, represent members of board of regents in civil actions; and
- (3) Recognizing the university general counsel as the attorney authorized to provide legal services to the university regarding uncollectable accounts and certain types of real property acquisitions.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Service of process. (a) Service of process upon the University of Hawaii shall be made by serving a filed and certified copy of the summons and of the complaint on the university general counsel in accordance with applicable court rules and chapter 634 or on any attorney in the office of the university general counsel.

(b) Service of process upon an officer or employee of the University of Hawaii being sued in their official capacity shall be made by serving the University of Hawaii and by delivering a copy of the summons and of the complaint to that officer or employee in accordance with applicable court rules and chapter 634.”

SECTION 3. Section 26-35.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (e) and (f) to read:

“(e) The attorney general, or in the case of the board of regents of the University of Hawaii, its university general counsel, shall represent and defend a member in any civil action for which immunity is conferred under subsection (b), or when the attorney general, or, if the action involves a member of the board of regents, the university general counsel, determines that indemnification is available to the member under subsection (c), and the member against whom the action is brought has submitted a written request for representation and has provided the attorney general, or the university general counsel in the case of an action involving a member of the board of regents, with all process or complaint served upon the member within a reasonable period of time, but not more than five days after being served with the process or complaint. The attorney general, or the university general counsel, may terminate the representation and defense of the member at any time if, after representation and defense is accepted, the attorney general, or the university

general counsel, determines that indemnification would not be available to the member under subsection (c).

(f) A member may retain counsel of the member's own choice at the member's own expense. If the member chooses to retain counsel at the member's own expense, the State shall not indemnify the member even though the member would have been entitled to indemnification under subsection (c). The attorney general, or the university general counsel in the case of a member of the board of regents, may enter an appearance in any action in which the member is represented by counsel of the member's own choice, even though no request for the appearance has been made by the member."

2. By amending subsections (h) and (i) to read:

"(h) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member proceeds to judgment in the action for which representation was denied, the member may commence an action against the State or the University of Hawaii in the case of a member of the board of regents, in the circuit court to recover reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees. The State or the University of Hawaii in the case of a member of the board of regents, shall pay the judgment or reimburse the member if the member has satisfied the judgment in an action for which representation was denied; provided the member was found not liable in that action or the member establishes by a preponderance of the evidence that the member is entitled to indemnification under subsection (c). A finding of negligence against the member in the civil action for which representation was denied shall not be binding upon the circuit court in any action brought under this subsection. The member shall commence any action under this subsection no later than two years after entry of judgment in the action for which the member was denied representation if no appeal is filed, or two years after the conclusion of the final appeal from that judgment if an appeal is filed.

(i) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member negotiates a compromise or settlement without an entry of judgment in the action for which representation was denied, the member may seek to introduce a bill in the legislature to secure an appropriation to reimburse the member for the amount of the settlement or that portion which constitutes a reasonable settlement, and for reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees."

SECTION 4. Section 40-82, Hawaii Revised Statutes, is amended to read as follows:

"§40-82 Uncollectible accounts. (a) The directors, boards, or executive heads of executive departments may from time to time prepare and submit for the review of the attorney general a list of all uncollectible accounts in their departments. Such accounts as the attorney general finds to be uncollectible shall be entered in a special record and be deleted from the accounts receivable records of the departments, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the attorney general finds that the facts as alleged and presented to the attorney general were not true, or that the account has become collectible.

As used in this section, “uncollectible account” means an account with regard to which:

- (1) The debtor or party causing damage to property belonging to the State is no longer within the jurisdiction of the State;
- (2) The debtor or party causing damage to property belonging to the State cannot be located;
- (3) The party causing damage to property belonging to the State is unknown or cannot be identified;
- (4) The debtor has filed bankruptcy and has listed the State as a creditor; or
- (5) Any other account as may be deemed by the attorney general to be uneconomical or impractical to collect.

(b) The judiciary may from time to time prepare lists of all delinquent fines and restitution, which in its judgment are uncollectible. The fines or restitution that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two years. Any fines or restitution so written off may be transferred back to the judiciary’s accounts receivable if the judiciary finds that the alleged facts as previously presented to it were not true, or that the fines or restitution are in fact collectible, or that the fines or restitution have become collectible. Nothing in this section shall preclude a person to whom restitution is owed from pursuing collection of the debt.

(c) The judiciary shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, which shall summarize the types and amounts of uncollectible delinquent fines and restitution that either were:

- (1) Entered in a special record and deleted from the judiciary’s other books; or
- (2) Transferred back to the judiciary’s accounts receivable.

(d) The University of Hawaii may from time to time prepare for the review of the university general counsel a list of all uncollectible accounts. Such accounts as the university general counsel finds to be uncollectible shall be entered into a special record and be deleted from the accounts receivable records of the university, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the university general counsel finds that the account has become collectible.

(e) The university shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, which shall summarize the types and amounts of uncollectible delinquent fines and restitution that either were:

- (1) Entered in a special record and deleted from the university’s other books; or
- (2) Transferred back to the university’s accounts receivable.”

SECTION 5. Section 107-10, Hawaii Revised Statutes, is amended to read as follows:

“§107-10 Acquiring of real property; prior approval. No real property or any right, title, or interest therein shall be acquired by agreement, purchase, gift, devise, eminent domain, or otherwise, for any purpose, by the State or any department, agency, board, commission, or officer thereof, without the prior approval of the attorney general as to form, exceptions, and reservations. As to property acquired

by the University of Hawaii, the attorney general may delegate to the University general counsel the authority to approve as to form, exceptions, and reservations. In cases involving acquisitions by the University of Hawaii of interests in real property that do not require legislative appropriations, the general counsel for the University of Hawaii may give approval as to form, exceptions, and reservations.”

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 244

H.B. NO. 201

A Bill for an Act Relating to the Privacy of Health Care Information Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 87, Session Laws of Hawaii 1999, was well intended to protect the privacy of medical patients. However, when the Act’s effective date of July 1, 2000, approached, Hawaii’s businesses, insurers, physicians, and even state agencies realized the difficulty and/or impossibility of compliance. With the civil and criminal penalties so severe, the 2000 legislature, during the second special session, amended the law so that entities affected by this chapter could have an additional year to comply, as well as attend the Medical Privacy Task Force meetings to have their concerns addressed.

It was not the intent of the legislature at that time to have Act 87, Session Laws of Hawaii 1999, repealed. However, after a series of informational briefings in January 2001, and careful review of the dissenting report, the 2001 legislature finds little support for a Hawaii Medical Privacy Law in light of the adoption of federal rules and regulations on medical privacy by the United States Department of Health and Human Services. In fact, long-time supporters and original medical privacy task force members stated that they may support a repeal of Act 87, Session Laws of Hawaii 1999, in light of the federal government’s action.

The legislature further finds that although there is a concern about the privacy of medical records, there is no evidence of widespread abuse in Hawaii. This is a complex issue, and there needs to be a clear understanding of what, if any, problems Hawaii faces in protecting medical privacy.

Thus, considering the testimony from the recent informational briefings, which included the testimony of the lieutenant governor, the purpose of this Act is to repeal Act 87, Session Laws of Hawaii 1999, and all other acts related to Act 87 which in whole or in part amended Act 87 or its preliminarily codified provisions in chapter 323C, Hawaii Revised Statutes, except the provision on furnishing mental health information to the chief of police for the evaluation of fitness to acquire or own a firearm. This provision is reenacted in the firearms law.

SECTION 2. Act 127, Session Laws of Hawaii 2000, is amended by repealing section 3.

~~["SECTION 3. Chapter 323C, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated to read as follows:~~

~~“§323C-A Disclosure for firearm permit and registration purposes. A health care provider or public health authority shall disclose health information, including protected health care information, relating to an individual’s mental health history, to the appropriate county chief of police in response to a request for the information from the chief of police, provided that:~~

- ~~(1) The information shall be used only for the purposes of evaluating the individual’s fitness to acquire or own a firearm; and~~
- ~~(2) The individual has signed a waiver permitting release of the health information for that purpose.”’]~~

SECTION 3. Act 87, Session Laws of Hawaii 1999, is repealed.

SECTION 4. Act 91, Session Laws of Hawaii 2000, part II, is repealed.

SECTION 5. Act 140, Session Laws of Hawaii 2000, is repealed.

SECTION 6. Act 1, Second Special Session Laws of Hawaii 2000, is repealed.

SECTION 7. Statutory material to be repealed is bracketed and stricken.

SECTION 8. This Act shall take effect on June 30, 2001.

(Approved June 14, 2001.)

ACT 245

S.B. NO. 1061

A Bill for an Act Relating to Real Estate Brokers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

“§467-9.5 Prerequisites for examination. (a) No individual shall be eligible for the licensing examination unless the individual is:

- (1) A citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority; and

- (2) Applying for ~~[the]~~:

~~(A)~~ The real estate salesperson examination and has satisfactorily completed a commission-approved preclicensing course for real estate salesperson candidates, which includes real estate principles, or ~~[their]~~ its equivalent as determined by the commission;

- ~~[(3) Applying for the]~~ or

~~(B)~~ The real estate broker examination and:

~~[(A)]~~ (i) Is currently licensed as a Hawaii real estate salesperson;

~~[(B)]~~ (ii) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and

~~[(C)]~~ (iii) Has experience as a full-time state-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for ~~[the three-year]~~ at least three years of the five-year period immediately prior to the ~~[licensing examination]~~ submission of the experience certification application¹ and has

practical real estate salesperson experience, as certified by the principal broker or principal brokers during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request equivalency for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission[; or

(4) Specifically authorized by the commission].

(b) Each individual shall certify [on the application for examination] that the prerequisites set forth in this section have been or will be satisfied prior to the date of examination. The examination score of any individual who has taken the examination without having satisfied the prerequisites set forth in this section prior to the date of examination shall be voided.”

SECTION 2. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

“§467-30 Registration [~~licenses, and~~], bonding, and other requirements for condominium hotel operators. (a) As used in this section, “condominium hotel” includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, which are used to provide transient lodging for periods of less than thirty days.

(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

[~~(1)~~] ~~Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;~~

(2) (1) Register by submitting a completed commission application form with the commission requested information, receive commission approval prior to conducting condominium hotel activity, and re-register on or before the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of apartments owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;

[~~(3)~~] (2) Obtain and keep current a fidelity bond from an insurance company [~~registered with~~] authorized to issue fidelity bonds by the insurance division of the department of commerce and consumer affairs. The fidelity bond shall be in an amount equal to \$500 multiplied by the aggregate number of apartments in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of apartments excludes the number of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments included in a registered time share plan managed by a registered time share plan manager. The fidelity bond shall cover all of the

condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company ~~[registered with]~~ authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant [an exemption or] a bond alternative[;] or permit deductibles. No [fidelity bond exemption shall be granted to a] condominium hotel operator ~~[who is exempt from paragraph (1);]~~ shall be exempt from the fidelity bond requirement; and

~~[(4)]~~ (3) Pay an application fee and an initial registration or a re-registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this ~~[subsection]~~ section shall not apply to persons who are subject to section 467-2.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a real estate salesperson license shall be required of those employees of a condominium hotel operator who only perform or facilitate the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section "operating a condominium hotel" includes the management of the apartments in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments directly or indirectly from the apartment owners for purposes of providing transient lodging. The condominium hotel operator shall provide a written contract to the owner or owners of each apartment under the condominium hotel operation, expressing the exact agreements of each party including all financial and accounting obligations, and ~~[if applicable,]~~ the notification requirements of subsection ~~[(f);]~~ (g).

(f) A condominium hotel operator ~~[operating exclusively]~~ shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws ~~[may be exempt from subsection (b)(1); provided that the condominium hotel operator;]~~

(g) The registered condominium hotel operator:

- (1) Shall not provide or offer lodgings thirty days or longer;
- (2) Shall not be licensed as a real estate broker or a real estate salesperson;
- (3) Shall not conduct any other activities contained in the definition of the term "real estate broker";
- (4) Shall appoint an employee or principal to have direct management and responsibility over condominium hotel operations; and
- (5) Shall provide evidence of written notification to all representing apartment owners of ~~[the real estate broker exemption and]~~ the provisions of this ~~[subsection]~~ section including the nonapplicability of the real estate

recovery fund[, and apply to the commission for approval of the exemption on a form provided by the commission].

~~[(g)]~~ (h) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment owners due to fraudulent or dishonest acts by employees. If more than one apartment owner suffers a loss, the condominium hotel operator shall divide the proceeds among the apartment owners in proportion to each apartment owner's loss.

~~[(h)]~~ (i) All persons handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator.

(j) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers, in compliance with and licensed under this chapter, conducting condominium hotel activity."

SECTION 3. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a)~~ Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. ~~[Beginning December 31, 1996, the]~~ The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include ~~[but not be limited to evidence of and information on fidelity bond coverage,]~~ the name, business address, phone number, and names of association of apartment owners managed;
- (3) ~~[Provide evidence with the initial registration application and reregistration application of a]~~ Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$100,000. [Current] Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond [includes] or a certification statement from an insurance company [registered with the] authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity

bond. The fidelity bond shall protect the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;

- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the fidelity bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association of apartment owners cannot recover its loss from the fidelity bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
 - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application~~[, the fidelity bond,]~~ or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 14, 2001.)

Note

1. "Submission of the experience certification application" should be underscored.

A Bill for an Act Relating to Vital Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 338, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§338- Verification in lieu of a certified copy. (a) Subject to the requirements of section 338-18, the department of health, upon request, shall furnish to any applicant, in lieu of the issuance of a certified copy, a verification of the existence of a certificate and any other information that the applicant provides to be verified relating to the vital event that pertains to the certificate.

(b) A verification shall be considered for all purposes certification that the vital event did occur and that the facts of the event are as stated by the applicant.

(c) Verification may be made in written, electronic, or other form approved by the director of health.

(d) The fee for a verification in lieu of a certified copy shall be one half of the fee established in section 338-14.5 for the first certified copy of a certificate issued.

(e) Fees received for verifications in lieu of certified copies shall be remitted, and one half of the fee shall be deposited to the credit of the vital statistics improvement special fund in section 338-14.6 and the remainder of the fee shall be deposited to the credit of the state general fund.”

SECTION 2. Section 338-18, Hawaii Revised Statutes, is amended to read as follows:

“§338-18 Disclosure of records. (a) To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part or by rules adopted by the department of health.

(b) The department shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record. The following persons shall be considered to have a direct and tangible interest in a public health statistics record:

- (1) The registrant;
- (2) The spouse of the registrant;
- (3) A parent of the registrant;
- (4) A descendant of the registrant;
- (5) A person having a common ancestor with the registrant;
- (6) A legal guardian of the registrant;
- (7) A person or agency acting on behalf of the registrant;
- (8) A personal representative of the registrant’s estate;
- (9) A person whose right to inspect or obtain a certified copy of the record is established by an order of a court of competent jurisdiction;
- (10) Adoptive parents who have filed a petition for adoption and who need to determine the death of one or more of the prospective adopted child’s natural or legal parents;
- (11) A person who needs to determine the marital status of a former spouse in order to determine the payment of alimony;

- (12) A person who needs to determine the death of a nonrelated co-owner of property purchased under a joint tenancy agreement; and
- (13) A person who needs a death certificate for the determination of payments under a credit insurance policy.

(c) The department may permit the use the¹ data contained in public health statistical records for research purposes only, but no identifying use thereof shall be made.

(d) Index data consisting of name and sex of the registrant, type of vital event, and such other data as the director may authorize shall be made available to the public.

(e) The department may permit persons working on genealogy projects access to microfilm or other copies of vital records of events that occurred more than seventy-five years prior to the current year.

(f) Subject to this section, the department may direct its local agents to make a return upon filing of birth, death, and fetal death certificates with them, of certain data shown to federal, state, territorial, county, or municipal agencies. Payment by these agencies for these services may be made as the department shall direct.

(g) The department shall not issue a verification in lieu of a certified copy of any such record, or any part thereof, unless it is satisfied that the applicant requesting a verification is:

- (1) A person who has a direct and tangible interest in the record but requests a verification in lieu of a certified copy;
- (2) A governmental agency or organization who for a legitimate government purpose maintains and needs to update official lists of persons in the ordinary course of the agency's or organization's activities;
- (3) A governmental, private, social, or educational agency or organization who seeks confirmation of a certified copy of any such record submitted in support of or information provided about a vital event relating to any such record and contained in an official application made in the ordinary course of the agency's or organization's activities by an individual seeking employment with, entrance to, or the services or products of the agency or organization;
- (4) A private or government attorney who seeks to confirm information about a vital event relating to any such record which was acquired during the course of or for purposes of legal proceedings; or
- (5) An individual employed, endorsed, or sponsored by a governmental, private, social, or educational agency or organization who seeks to confirm information about a vital event relating to any such record in preparation of reports or publications by the agency or organization for research or educational purposes."

SECTION 3. New statutory material is underscored.²

SECTION 4. This Act shall take effect upon its approval.

(Approved June 14, 2001.)

Notes

1. Prior to amendment "of" appeared here. "The" should be underscored.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Environment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 341-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of implementing this chapter [and chapter 343D].”

SECTION 2. Chapter 343D, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 14, 2001.)

A Bill for an Act Relating to the Intermediate Appellate Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 602-51, Hawaii Revised Statutes, is amended to read as follows:

“**§602-51 How constituted.** The intermediate appellate court shall consist of a chief judge and [~~three~~] five associate judges. The chief judge, who shall be specifically selected, shall supervise the administrative duties of the court.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 18, 2001.)

A Bill for an Act Making an Appropriation for the Millennium Workforce Development Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 371-17, Hawaii Revised Statutes, is amended to read as follows:

“**[E]§371-17[H] Millennium workforce development training program.**
(a) There is established a millennium workforce development training program, hereinafter referred to as the program, that shall be placed with the [~~department of labor and industrial relations~~] department of business, economic development, and

tourism for administrative purposes. The program shall provide education and training at the post-high school to graduate levels, and shall include public, private, and for-profit educational institutions. In the design and delivery of training, the program may cooperate or contract with other public, private, and for-profit institutions.

(b) The program shall seek and encourage partnerships with private sector industries such as biotechnology, information technology, environmental science and technology, and telecommunications, as may be appropriate, to provide pre-employment or employment training, or on-the-job training for employees and ~~[perspective]~~ prospective employees.

(c) The ~~[department of labor and industrial relations]~~ department of business, economic development, and tourism shall establish and lead a public and private partnership task group, that shall include representatives from ~~[the department of business, economic development, and tourism,]~~ the department of labor and industrial relations, the University of Hawaii at Manoa, the University of Hawaii community colleges, and private sector representatives to advise on the program design, industry, recruitment, and training delivery activities of participating entities.

(d) In carrying out the duties of this section, the ~~[department of labor and industrial relations]~~ department of business, economic development, and tourism and the University of Hawaii shall seek and utilize any available funding sources, including grant moneys.”

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2001-2002 to operate the millennium workforce development training program.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 250

H.B. NO. 862

A Bill for an Act Making an Appropriation for the Establishment of Social Worker Positions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that two full-time social worker IV positions are needed for the department of public safety’s intake service center’s branch offices. These positions must be filled to:

- (1) Comply with section 353-10, Hawaii Revised Statutes;
- (2) Comply with the National Institute of Corrections consultant’s recommendation on suicide prevention to avoid possible litigation;
- (3) Comply with a department of public safety consent decree; and
- (4) Fulfill the department of public safety’s strategic plans to be more efficient and cost effective.

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The purpose of this Act is to appropriate funds to establish two full-time social worker IV positions in the department of public safety's intake service centers.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$68,616, or so much thereof as may be necessary for fiscal year 2001-2002, and the same sum, or so much thereof as may be necessary for fiscal year 2002-2003, for the establishment of two full-time equivalent (2.0 FTE) social worker IV positions with the department of public safety's intake service centers.

The sums appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 251

H.B. NO. 1004

A Bill for an Act Relating to Original Jurisdiction of the Hawaii Supreme Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 37D-9, Hawaii Revised Statutes, is amended to read as follows:

“[E]§37D-9[H] Litigation; jurisdiction[-]; appeal. The director of finance may petition the [supreme] circuit court of the first circuit for an opinion as to the validity of any financing or related agreement entered into pursuant to the provisions of this chapter. The petition shall constitute a [ease] civil proceeding for purposes of section [602-5,] 603-21.5(a)(3), and the [supreme] circuit court of the first circuit shall have exclusive and original jurisdiction to receive and determine the question presented in the petition, irrespective of an actual controversy or dispute regarding the agreement or its validity. Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority.”

SECTION 2. Section 103D-709, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision which shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the [supreme] circuit court of the circuit where the case or controversy arises under section 103D-710.”

SECTION 3. Section 103D-710, Hawaii Revised Statutes, is amended to read as follows:

“§103D-710 Judicial review. (a) Only parties to proceedings under section 103D-709 who are aggrieved by a final decision of a hearings officer under that section may apply for judicial review of that decision. The proceedings for review

shall be instituted in the ~~[supreme court.]~~ circuit court of the circuit where the case or controversy arises.

(b) An application for judicial review shall not operate as a stay of the decision rendered under section 103D-709.

(c) Within twenty calendar days of the filing of an application for judicial review ~~[in the supreme court.]~~, the hearings officer shall transmit the record of the administrative proceedings to the ~~[supreme court.]~~ circuit court of the circuit where the case or controversy arises.

(d) The review shall be scheduled as expeditiously as practicable. It shall be conducted on the record of the administrative proceedings, and briefs and oral argument. No new evidence shall be introduced ~~[in the appellate court]~~, except that the circuit court may, if evidence is offered which is clearly newly discovered evidence and material to the just decision of the appeal, admit the same.

(e) Upon review of the record the circuit court may affirm the decision of the hearings officer issued pursuant to section 103D-709 or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if substantial rights may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the chief procurement officer or head of the purchasing agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(f) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority."

SECTION 4. Section 103D-712, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Requests for judicial review under section 103D-710 shall be filed in the [supreme] circuit court of the circuit where the case or controversy arises within ten calendar days after the issuance of a written decision by the hearings officer under section 103D-709."

SECTION 5. Section 201B-15, Hawaii Revised Statutes, is amended to read as follows:

"[F]§201B-15[F] Court proceedings; preferences; venue. (a) Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil cases, except election cases, in ~~[any]~~ the circuit court of [this State] the circuit where the case or controversy arises, and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar.

~~[The same preference shall be granted upon]~~ (b) Upon application of counsel to the authority, the same preference shall be granted in any action or proceeding questioning the validity of this chapter in which the authority may be allowed to intervene.

~~[In addition to the preference provided in this section, any]~~ (c) Any action or proceeding to which the authority, the State, or the county may be party, in which any question arises as to the validity of this chapter or any portion of this chapter, or

any action of the authority may be filed in the [supreme] circuit court of¹ [the State,] of the circuit where the case or controversy arises, which court is hereby vested with original jurisdiction over the action.

(d) Notwithstanding any provision of law to the contrary, declaratory relief from the [supreme] circuit court may be obtained for any action.

(e) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority."

SECTION 6. Section 206E-20, Hawaii Revised Statutes, is amended to read as follows:

"§206E-20 Court proceedings; preferences; venue. (a) Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be ~~[preferred over all other civil cases, except election cases, in any court of this State and]~~ brought in the circuit court of the circuit where the case or controversy arises, and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar.

~~[The same preference shall be granted upon]~~ (b) Upon application of counsel to the authority, the same preference shall be granted in any action or proceeding questioning the validity of this chapter in which the authority may be allowed to intervene.

~~[In addition to the preference provided in this section, any such]~~ (c) Any action or proceeding to which the authority, the State, or the county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, may be filed in the [supreme] circuit court of the² [State,] of the circuit where the case or controversy arises, which court is hereby vested with original jurisdiction over ~~[such action, and notwithstanding]~~ the action.

(d) Notwithstanding any provision of law to the contrary, declaratory relief may be obtained for ~~[any such]~~ the action.

(e) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority."

SECTION 7. Section 206G-10, Hawaii Revised Statutes, is amended to read as follows:

"[E]§206G-10[] Court proceedings; preferences; venue. (a) Any action or proceeding to which the commission, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil cases, except election cases, in ~~[any] the circuit court of [this State]~~ the first circuit and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar.

~~[The same preference shall be granted upon]~~ (b) Upon application of counsel to the commission, the same preference shall be granted in any action or proceeding questioning the validity of this chapter in which the commission may be allowed to intervene.

~~[In addition to the preference provided in this section, any such]~~ (c) Any action or proceeding to which the commission, the State, or the county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, may be filed in the [supreme] circuit court of the [State,] first circuit, which court is hereby vested with original jurisdiction over the action~~[-and notwithstanding]~~.

(d) Notwithstanding any provision of law to the contrary, declaratory relief may be obtained for ~~[any such]~~ the action.

(e) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 19, 2001.)

Notes

1. “Of” should be bracketed.
2. “Of the” should be bracketed.

ACT 252

H.B. NO. 1211

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§134- Disclosure for firearm permit and registration purposes. A health care provider or public health authority shall disclose health information, including protected health care information, relating to an individual’s mental health history, to the appropriate county chief of police in response to a request for the information from the chief of police; provided that:

- (1) The information shall be used only for the purpose of evaluating the individual’s fitness to acquire or own a firearm; and
- (2) The individual has signed a waiver permitting release of the health information for that purpose.”

SECTION 2. Section 134-1, Hawaii Revised Statutes, is amended by amending the definition of “electric gun” to read:

““Electric gun” means any portable device that is electrically operated to project a missile or electromotive force. It does not include any electric livestock prod used in animal husbandry[.] and any automatic external defibrillator used in emergency medical situations.”

SECTION 3. Section 134-16, Hawaii Revised Statutes, is amended to read as follows:

“§134-16 Restriction on possession, sale, gift, or delivery of electric guns. (a) It shall be unlawful for any person, including a licensed manufacturer, licensed importer, or licensed dealer, to possess, offer for sale, hold for sale, sell, give, lend, or deliver any electric gun.

(b) Any electric gun in violation of subsection (a) shall be confiscated and disposed of by the chief of police.

(c) This section shall not apply to law enforcement officers of county police and sheriff departments of this State, or vendors providing electric guns to those entities; provided that electric guns shall at all times remain in the custody and control of the county policy¹ or sheriff departments.

(d) The county police and sheriff departments of this State shall maintain records regarding every electric gun in their custody and control. Such records shall report every instance of usage of the electric guns; in particular, records shall be maintained in a similar manner as for those of discharging of firearms. The county police and sheriff departments shall annually report to the legislature regarding these records twenty days before the beginning of each session."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 6. This Act shall take effect upon its approval.

(Approved June 19, 2001.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 253

H.B. NO. 1233

A Bill for an Act Relating to Youth Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1989, the legislature enacted Act 375, Session Laws of Hawaii 1989, which provided services and programs for youths at risk under one umbrella agency, the office of youth services (OYS). Act 375 also charged OYS with the responsibility for developing prevention services targeted at high risk youths and for developing and operating a network of youth services centers (centers) statewide. The mission of the centers is to provide an array of services to youths through delinquency prevention, intervention, and community empowerment programs.

However, the legislature finds that the mission of establishing full service youth centers has been hampered by the lack of sufficient funding for the centers. In fact, since 1994, funding for the centers has decreased rather than increased. In 1998, OYS issued requests for proposals to develop and fund the centers. The legislature finds that although OYS combined funds from a variety of sources to support development of the centers, funding continues to be less than adequate to meet the mandates of the centers under Act 375.

In 1999, OYS brought together executive directors and other staff from youth-serving agencies. One of the goals of the meetings was to examine the youth services centers concept and brainstorm on moving the concept forward. In late 2000, eight youth-serving agencies met and agreed to collaboratively move the youth services centers concept forward by seeking additional funding from the legislature and private foundations.

The legislature also finds that OYS has been designated by the governor to administer federal grant programs pertaining to, among other things, juvenile delinquency. One of these programs, the Hookala project, is solely funded with federal dollars. The Hookala project works with primarily at-risk youths by removing juveniles from inappropriate secured detention, and links children and families in trouble to services that prevent and minimize further involvement with the

juvenile justice system. In fiscal year 1997-1998, nine hundred eighty-six youths were served while in 1998-1999, seven hundred seventy-six youths were served. The State's compliance with the mandates of the juvenile justice and delinquency prevention federal grant programs ensures that Hawaii continues to receive valuable federal funds.

The purpose of this Act is to enhance the youth services centers by clarifying their services and appropriating funds for the centers and services.

SECTION 2. Section 352D-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each center shall ~~[be responsible]~~:

- (1) Be responsible for coordinating all services, justice system or nonjustice system, both public and private, to the youth referred to it~~[-]~~; and
- (2) Be responsive to the needs of its immediate community and offer an array of services that are tailored to the needs of its constituents.”

SECTION 3. The office of youth services shall monitor and evaluate youth services centers and shall submit a report to the legislature on its findings and recommendations at least twenty days prior to the convening of the regular session of 2002.

The report shall include:

- (1) A descriptive summary of the operation of youth services centers, including the services they provide;
- (2) The number of recipients of services at each center;
- (3) The allocation of funds to each center;
- (4) Staffing information at each center;
- (5) Recommendations regarding the continuation of youth services centers and future plans for expansion;
- (6) Recommendations regarding the process by which youth services centers are allocated resources;
- (7) A projected budget for the expenditures required to continue or expand youth services centers;
- (8) Proposals for legislation that are necessary to facilitate the continuation or expansion of youth services centers; and
- (9) A working plan of action for the strategic plan as designed in Act 375, Session Laws of Hawaii 1989.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003 for youth services centers.

The sums appropriated shall be expended by the office of youth services for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that education is a top priority in all fifty states. In the twenty-first state legislature, two great possibilities exist for Hawaii's students in the new economy: schools that have fully integrated workforce readiness proficiencies in their curricula and realization of the full potential of private/public partnerships. These possibilities directly link to the mission of the school-to-work system which is to develop an educational system involving partnerships to link educational experiences with career opportunity and community, thereby helping Hawaii students achieve their potential.

From 1996 to 1999 state and regional partnerships supporting school-based and work-based learning produced exemplary accomplishments which directly benefited our students:

- (1) Sixty-three school-based enterprises have been reported from elementary, middle, and high schools, including enterprises such as food service, networking installation, hydroponic produce, and web design. In all situations, students are in charge of all aspects of running a small business including planning, marketing, production, and sales;
- (2) Four community colleges and eleven high schools have been involved in the CISCO academies. To date, several hundred students have received training in networking equipment and network management. The students have already started to use the knowledge and skills learned in the academies to set up networks for their schools, other schools, and their communities;
- (3) Groundhog job-shadow day has involved over one thousand eight hundred students and teachers throughout the State in the last two years. In this one-day activity, participants have had the opportunity to explore career interests;
- (4) Since the enactment of Act 344 in 1997, a total of four hundred fourteen private businesses have been safety-surveyed and approved as safe sites for school-to-work learning activities;
- (5) Twenty-four local partnerships have been established between one thousand three hundred different employers and Hawaii schools, including 99.9 per cent of public schools, ten, two- or four-year colleges, and several private post-secondary institutions;
- (6) Approximately eight per cent of secondary school students participated in job shadowing, two per cent participated in mentoring activities, two per cent participated in paid or unpaid internships, and fourteen per cent participated in school-based enterprises, community service, or service learning in 1997-1999;
- (7) The running start program allows qualifying juniors and seniors in high school to take college-level courses and receive both high school and college credit; and
- (8) Ninety teachers have been trained in complex, integrated, real-world projects that are academically rigorous, relevant to students and the community, and empowering to over ten thousand students.

School-to-career initiatives enhance the achievement of academic, performance, and industry standards. School-to-career initiatives improve academic rigor through relevant, real-world experiences by integrating school-based learning, work-based learning, and information technology with the formal academic, career,

and technical education curriculum. To sustain and further develop a strong school-to-career development system for kindergarten to grade twelve students, Hawaii must support youths with career guidance, intra-agency help in developing careers, and networks of support that serve as the foundation for lifelong learning.

Past and present members of the Hawaii state school-to-work executive council believe that a career development system establishes much-needed cohesion, coherence, and infrastructure from kindergarten to postsecondary levels. However, federal grant moneys for the state school-to-work system end on October 1, 2001.

The legislature recognizes the importance of preparing students for an economy that demands strong academic, employability, and technical skills. The purpose of this Act is to support the operational transition from the current Hawaii school-to-work office to the career development system. These are urgent goals requiring the development and implementation of a plan that integrates existing programs such as vocational education, career guidance, transition centers, learning centers, academies, and alternative programs into one coherent career development system.

Establishment of a career development system within the department of education will encourage collaboration towards enabling all students to earn transferable/portable credentials, prepare them for jobs in highly skilled careers, and increase the opportunities for further education, including four-year colleges and universities.

SECTION 2. The legislature finds and declares the following:

- (1) Hawaii must make more efficient use of limited resources to do a better job of preparing students for an economy that demands that workers have strong academic and career knowledge and skills, are adaptable to change, and are prepared for lifelong learning;
- (2) The growth of Hawaii's population and the labor force require special efforts to attract, support, and retain businesses that pay high wages to highly skilled workers. Improvement in the overall quality of the workforce is a vital component of economic development of Hawaii;
- (3) The current array of education and training programs need to continue to move toward a more coherent system based on public-private collaboration and cooperation;
- (4) The policies and methods through which Hawaii provides education to prepare all young people for lifelong learning, higher education, and highly-skilled, highly-paid careers may be the most important component of Hawaii's economic growth;
- (5) Sustaining and further developing a strong career development system needs to be the top priority in establishing an efficient and effective educational system and in establishing a seamless system of lifelong education and employment for all citizens in Hawaii; and
- (6) Hawaii's career development system will be a long-term investment in supplying a highly-skilled and adaptable workforce. By successfully matching the skills of the emerging workforce with the needs of Hawaii's growing economy, the career development system will be one of the most essential components in ensuring the State's competitive edge in an increasingly global economy.

SECTION 3. The Hawaii state school-to-work department of education's plan shall address the findings and declarations in section 2 by developing targeted programs that are consistent with department of education policies and initiatives:

- (1) Career pathways delivery models. The school-to-work executive director shall administer a grant award program for local partnerships that meets specific requirements. Detailed plans submitted shall be a part of

each school's Standards Implementation Design (SID) and may include provisions for the following:

- (A) Academies, smaller learning communities, and blended classrooms which focus on a career path with postsecondary alignment emphasizing learning options for all students;
- (B) Career paths which emphasize integrated academic and technical learning, project-based learning, information technology, work-based learning, and collaborations with post-secondary and business partners;
- (C) All students shall be eligible and have access to the activities;
- (D) The ability to provide school-based learning, work-based learning, and service learning at an appropriate level for each local partnership; and
- (E) Accountability measurements that demonstrate increased academic performance, decreased dropout rates, and improved transitions to appropriate employment, apprenticeships, and post-secondary institutions.

Funds shall be awarded through a competitive grant process, and technical assistance shall be coordinated by the career development transition office;

- (2) Career development centers. A career center shall be located in high schools as funding becomes available. The career centers shall provide group career activities, individual career guidance, information about careers, post-high school training programs, and educational options to students, parents, and staff;
- (3) Technical and professional training for staff. The career development plan shall include professional development activities which integrate curriculum with work-based connections and student-centered assessment. A priority shall be placed on project-based learning, including information technology; and
- (4) Career development system transition. The current Hawaii school-to-work office, the office of the state director for career and technical education, and the department of education's career and technical education staff shall facilitate the transition to a systems approach for career development by:
 - (A) Identifying an interagency partnership which may include chambers of commerce, the department of labor and industrial relations, department of business, economic development, and tourism, department of human services, director of career and technical education, Hawaii Business Roundtable, Workforce Development, and the University of Hawaii to facilitate the transition to a career development system that is supportive of the department's strategic plan for standards-based education;
 - (B) Defining the career development system within the organizational structure of the department of education;
 - (C) Pooling and aligning partnership resources for the career development system;
 - (D) Developing and implementing the career pathway delivery model grant process;
 - (E) Providing technical assistance to the awardees of the grants and to participating schools and agencies;
 - (F) Recruiting business partners to participate in the career pathway delivery model grant process; and

- (G) Coordinating professional development for project-based learning and the integration of academic and technical learning.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$550,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the following activities and programs:

- (1) Career development centers, \$252,000 (five centers);
- (2) Professional development, \$86,000; and
- (3) Career development transition office, \$212,000 operational moneys, including funding the establishment of:
 - (A) One exempt educational specialist III position;
 - (B) One intradepartmental/interagency resource teacher; and
 - (C) One secretary II position.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 255

H.B. NO. 1662

A Bill for an Act Relating to the High Technology Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2001-2002 to support high technology marketing and promotion activities.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 2. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 256

S.B. NO. 530

A Bill for an Act Relating to School Administrators.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§302A- Educational officers, salary incentives. (a) The salary ranges for principal and vice-principal positions shall be determined by the board, based on the position classification/compensation plan approved by the board and salary incentives designed to:

- (1) Keep exemplary principals and vice-principals at the school level;

- (2) Encourage exemplary principals and vice-principals to accept long-term assignments to hard-to-staff schools, special needs schools, and schools with high teacher turnover;
 - (3) Encourage exemplary teachers to become vice-principals;
 - (4) Encourage exemplary vice-principals to become principals; and
 - (5) Encourage exemplary educational officers to become vice-principals.
- (b) The department shall develop a definition of “exemplary” in consultation with the appropriate collective bargaining representative.
- Salary ranges and salary incentives for educational officer positions shall be subject to the requirements of sections 302A-625 and 302A-626.

§302A- Tuition assistance for exemplary teachers to attend the University of Hawaii. (a) The superintendent, subject to the availability of funds, may award tuition assistance to exemplary teachers who want to become vice-principals in Hawaii’s public schools, and who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section 304-4; and
 - (2) Taking courses that will lead to certification as a public school principal, on any campus of the University of Hawaii.
- (b) The superintendent shall adopt rules in accordance with chapter 91 to carry out the purposes of this section. The rules shall include:
- (1) A definition of “exemplary teacher” as determined under section 302A- (b);
 - (2) Descriptions of the minimum academic qualification of students who may be awarded full or partial tuition assistance under this section;
 - (3) Listings of acceptable fields of study, degrees, and periods of eligibility for students who may be awarded tuition assistance under this section;
 - (4) Procedures for demonstrating the ongoing, satisfactory academic performance of students who have accepted tuition assistance under this section;
 - (5) Explanations of any obligations for students who have accepted tuition assistance under this section;
 - (6) Procedures for administratively transferring moneys for tuition assistance awarded under this section from the department of education to the University of Hawaii; and
 - (7) Procedures for enforcing this subsection.
- (c) Chapters 42F, 103D, and 103F shall not apply to this section.”

SECTION 2. Section 302A-605, Hawaii Revised Statutes, is amended to read as follows:

“§302A-605 Principals and vice-principals. Principals [~~and vice-principals~~] shall meet the department’s certification requirements and shall have [~~served as a teacher for a period of not less than five years.~~] not less than five years of appropriate school-level experience of which at least three have been as a teacher. Vice-principals shall meet the department’s certification requirements and shall have appropriate school-level experience as determined by the department.”

SECTION 3. Section 302A-625, Hawaii Revised Statutes, is amended to read as follows:

“[H]§302A-625[H] Educational officers’ salary schedules. [(a)] The salary schedule for all educational officers of the department shall be negotiated pursuant to section 89-9.

[~~(b) Any principal, vice principal, or other educational officer on a ten-month work year must earn at least six credits within a three-year cycle in order to receive an increment or longevity step increase in the third year of the three-year cycle.~~]

SECTION 4. Section 302A-626, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Teachers and educational officers who have served satisfactorily for three years in their maximum increment step or in any longevity step and who have complied with the other requirements of sections 302A-602 to 302A-640, and 302A-701, shall receive longevity step increases~~[-]; provided that the board may grant principals and vice-principals longevity step increases more frequently than once every three years pursuant to section 302A-625.~~”

SECTION 5. Section 302A-631, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-631] Educational [officer] officers with special assignments[-]; principals and vice-principals at special needs schools.~~ (a) Educational officers at the state, district, and school levels with special assignments, where their duties and responsibilities are greater than the duties and responsibilities falling within the scope of their ordinary duties and responsibilities, shall be provided additional benefits by the department.

(b) Principals and vice-principals at special needs schools shall be provided additional benefits by the department pursuant to section 302A-625. As used in this subsection, “special needs schools” means those schools having a relatively large proportion of students exhibiting low performance, as indicated by such factors as low standardized achievement test scores, a high retention rate, and a low graduation rate for the area.”

SECTION 6. Section 302A-701, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-701] Incentive packages for quality teachers[-], principals, and vice-principals.~~ Teachers, principals, and vice-principals in the public school system may accept incentive packages provided by local communities for the purpose of retaining those teachers, principals, and vice-principals in schools with high teacher, principal, or vice-principal turnover. Packages may include such items as:

- (1) Provision of housing;
- (2) Provision of mileage reimbursement;
- (3) Provision of discounts at local businesses; and
- (4) Other items not covered by chapter 89, and agreed upon by the community.”

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2002-2003 for the purposes of this Act.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions

or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 257

S.B. NO. 900

A Bill for an Act Relating to Liquor License Applications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the liquor laws of the State for the benefit of applicants and other participants in a proceeding before the county liquor commissions. The legislature finds that government proceedings work best when all parties understand what the procedures and requirements are. The clarifications made by this Act will provide for more certainty in the liquor license application process and will reduce delays and costs associated with the processing of liquor license applications.

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of “premises” or “licensed premises” to read:

““Premises” or “licensed premises” means the [~~premises in respect of~~] building and property that houses the establishment for which a license has been or is proposed to be issued[-]; provided that in the case of class 12 hotel license, “premises” includes the hotel premises; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, “premises” means the establishment. As used in this definition, “establishment” means a single physical location where the selling of liquor takes place.”

SECTION 3. Section 281-39.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The liquor commission or agency of each county may deny or restrict the issuance of a liquor license for on-site sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public playground utilized extensively by minors, as determined by the liquor commission of each county[-]; provided that the liquor commission or agency of each county shall deny the issuance of a liquor license if forty per cent of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked;

have duly filed or caused to be filed their protests against granting the license. The distance of five hundred feet shall be measured from the boundary of the school or

public playground to the boundary of the applicant's ~~[establishment.] premises.~~ Public or private beaches, and public or private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this section. The provisions of this section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel liquor license applicants.'

SECTION 4. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

“§281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license; penalty. No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of such issuance or transfer except for good cause shown to the satisfaction of the liquor commission. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to such owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who must comply with the notice requirements as set forth in section 281-57. No class 5 or 12 license issued to a standard bar as defined in section 281-1, shall be transferable to other than a standard bar, and that such license shall be subject to revocation if the licensed premises is not retained as a standard bar except upon written application to the commission by the licensee and/or the proposed transferee, subject to sections 281-51 to 281-60.

A county may increase the requirements for transfers of class 5, category (2) and (4), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.

For the purpose of this section, “special liquor district” means an area designated by a county for restoration, reservation, redevelopment, or rejuvenation, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

Where a license is held by a partnership, the commission may, notwithstanding this section, transfer the license upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice and without public hearing.

Where a license is held by a limited partnership or a limited liability company, the admission or withdrawal of a limited partner or a member of the limited liability company shall not be deemed a transfer of the license held by the partnership or limited liability company, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner, partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, partners, member, or members who have been admitted, if that be the case. If the commission finds a limited partner or a member to be an unfit or improper person to hold a license in the limited partner's or member's own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership or the limited liability company until the unfit or improper partner or member is removed or replaced.

Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word “applicant”, as used in such sections, shall include each such proposed transferee, and the words, “application for a license or for the renewal of a license”, as used in such sections, shall include an application for the transfer of a license.

Upon the hearing, the commission shall consider the application and any objections to the granting thereof, and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer, and the refusal by the commission to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

If any licensee without such approval transfers to any other person the licensee’s business for which the licensee’s license was issued, either openly or under any undisclosed arrangement whereby any person other than the licensee comes into possession or control of the business, or takes in any partner or associate the commission may in its discretion suspend or cancel the license.

If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock which results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, prior to the date of such transfer, apply for and secure the approval of the transfer from the commission in writing. If the commission finds that the proposed transferee is an unfit or improper person to hold a license in the proposed transferee’s own right pursuant to section 281-45, it shall not approve the proposed transfer. If any transfer is made without the prior approval of the commission, the commission may in its discretion revoke or suspend the license until it determines that the transferee is a fit and proper person, and if the commission finds that the transferee is not a fit and proper person, until a retransfer or new transfer of the capital stock is made to a fit and proper person pursuant to section 281-45. In addition, the corporate licensee shall, within thirty days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of such officer or director. If the commission finds the transferee, officer, or director an unfit or improper person to hold a license in the transferee’s, officer’s, or director’s own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of such capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper officer or director is removed or replaced by a fit and proper person pursuant to section 281-45.

If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee’s license for cancellation.”

SECTION 5. Section 281-56, Hawaii Revised Statutes, is amended to read as follows:

“§281-56 Report by investigator. (a) On every application referred to the [§]investigator[§] under section 281-55, the investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than class 7, class 8, or class 9, such report shall show:

- (1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions including the relationship to surrounding residences which may share a common boundary or a common structure with the premises proposed for licensing;
- (2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;
- (3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of the church, chapel, or school grounds;
- (4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;
- (5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;
- (6) Whether or not in the opinion of the investigator the applicant is a fit and proper person to have a license;
- (7) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;
- (8) For the next application for a license that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and
- [(8)] (9) Any and all other matters and things, which in the judgment of the investigator pertain to or affect the matter of the application, or the issuance or the exercise of the license applied for.

(b) A copy of the report shall be furnished to the applicant not less than forty-eight hours before any hearing is had upon the application. Upon written request, a copy of the report shall be furnished to any requester.

(c) The applicant and any protester may challenge findings contained in the investigator's report before or at any hearing on the application."

SECTION 6. Section 281-57, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Upon the filing of the investigator's report upon any application the liquor commission may hold a preliminary hearing and upon such preliminary hearing it may deny the application. A notice of preliminary hearing on a previously denied, refused, or withdrawn application shall be given seven days before the preliminary hearing to any person who submitted a written request for notice.”

2. By amending subsection (c) to read:

“(c) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

- (1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises

- for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the last tax return filed by the person or the person's agent or representative;
- (2) In counties with a population of ~~one~~ two hundred-fifty thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to any applicant that is a hotel as defined in section 486K-1, a restaurant, or a convenience store. A notice sent pursuant to this paragraph shall be addressed to the "occupant" of the residential unit or small business; and
 - (3) For each condominium project and cooperative apartment within the five hundred-foot area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium or cooperative apartment involved.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). The commission shall cancel the hearing if not receiving the affidavit prior to the hearing or if discovering that the affidavit is false."

SECTION 7. Section 281-59, Hawaii Revised Statutes, is amended to read as follows:

"§281-59 Hearing[-]; rehearing. (a) Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest[-, and shall within]. The liquor commission shall accept all written or oral testimony for or

against the application whether the application is denied, refused, or withdrawn. Within fifteen days [thereafter]¹ after the hearing, or within thirty days thereafter if in its discretion the commission extends the fifteen days to thirty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority of the [registered]:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or [a majority of the owners]
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked;

have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise,² the commission may in its discretion grant or refuse the same.

For purposes of defining “a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment”, each property counts only once. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. Owners or lessees who own more than one property may count each property.

(b) The liquor commission shall make available to the applicant and any protester for review before the public hearing, the protest list of those persons who filed a protest or objection to the application; provided that the applicant shall not use the protest list to attempt to influence in any way any protester to withdraw the protest or objection. All applicants and protesters may submit corrections, additions, and subtractions to the master list and the protest list at the public hearing. The liquor commission shall rule on proposed corrections, additions, and subtractions and give reasons for the ruling.

(c) The commission may also, with like discretion[~~-, grant~~]:

- (1) Grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and [may of]
- (2) Of its own motion, or on the suggestion of any member, or of the investigator take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but in such case if the objection is one to which the applicant should be given a reasonable time to answer, a continuance may be granted in the discretion of the commission;

provided that in any case where any person affected by such decision petitions the commission for a rehearing of the application and on oath alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the commission seems sufficient to warrant a rehearing, such rehearing may be granted by the commission in its discretion[~~-~~] upon the publication of notice of rehearing at least seven days before the date of the rehearing. When a rehearing is allowed notice shall be given to the applicant and to the applicant's opponents, by publication or otherwise as the commission shall direct.”

SECTION 8. Section 281-60, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If an application pertaining to a particular premises or building location is denied, refused, or withdrawn, the next application from any applicant for that premises or building location shall include a report prepared by the applicant

evidencing a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal[; ~~provided that this section shall not apply to withdrawals which are not based on protests whether or not the protests are filed~~]. The commission shall deny the application at the preliminary hearing unless the applicant submits evidence of a substantial change in the circumstances that previously caused the denial, refusal, or withdrawal of an application pertaining to that premises or building location. The commission may consider the following factors in deciding whether to grant an application pertaining to a premises or building location for which an application has previously been denied, refused, or withdrawn:

- (1) Whether a majority of the registered voters residing within five hundred feet of the nearest point of the premises or building location for which the license is asked, or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises or building location for which the license is asked, no longer oppose the granting of the license;
- (2) Whether plans for the construction, building design, use, or operation of the proposed establishment have been altered such that they will not conflict with the character of the surrounding area. In evaluating the character of an area for the purposes of this section, the commission may consider the following factors:
 - (A) The usual and existing types of business, residential, and recreational uses and activities within the area;
 - (B) The proximity of residential areas;
 - (C) The population density of the area;
 - (D) The typical or ambient noise levels of the area;
 - (E) The motor vehicle traffic volume, congestion, and noise; and
 - (F) Any other factors that the commission finds relevant;
- (3) Whether the neighborhood board for the area where the premises is located has rendered a decision on the granting of the license;
- ~~(3)~~ (4) Whether the applicant is a fit and proper person to have a license; and
- ~~(4)~~ (5) Any other considerations deemed by the commission to affect the matter of the application, the issuance, or the exercise of the license applied for.”

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon approval.

(Approved June 19, 2001.)

Notes

1. So in original.
2. Comma should be underscored.

ACT 258

S.B. NO. 950

A Bill for an Act Relating to Diamond Head.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1976, the legislature adopted Act 104 to establish a Diamond Head State Monument as an historical site on Oahu. Act 104 states that the monument was to “consist of such lands as the department considers essential to the unimpaired preservation of the visual and historical aspects of Diamond Head and such state lands as may be best used for recreational purposes and to increase public access and enjoyment of the Monument.” Diamond Head State Monument was intended to include Diamond Head’s natural physical features from summit to the sea.

The legislature finds that in 1992, by adopting Act 313, it reaffirmed the recognition of Diamond Head Crater as a natural landmark by the federal government and a state monument by the State of Hawaii. Act 313 specified certain lands as within the Diamond Head State Monument area and required conformance to the Diamond Head State Monument Plan of 1979 which outlined a state policy of establishing a semi-wilderness park in Diamond Head Crater.

The purpose of this Act is to clarify the boundary of the Diamond Head State Monument area as including all public lands within the area bounded in the north by the Diamond Head Crater ridgeline, in the south by the shoreline, in the west by Diamond Head Park, and in the east by Kuilei Cliffs Beach Park.

SECTION 2. Section 6E-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a Diamond Head State Monument as a historical site on Oahu to be administered by the department of land and natural resources, and to consist of [these lands]:

- (1) All state owned lands within the state conservation land use district on the slopes of Diamond Head including the board of water supply booster pump site (tax map key 3-1-42:05);
- (2) Those lands that the department considers essential to the unimpaired preservation of the visual and historic aspects of Diamond Head [and these];¹
- (3) Those state lands more fully described in this section that may be best used for recreational purposes and to increase public access and enjoyment of the monument [-]; and
- (4) Kuilei Cliffs Park (tax map key 3-1-42:02 and tax map key 3-1-38:29) and Diamond Head Park (tax map key 3-1-42:04 and tax map key 3-1-37:01), which shall be administered by the city and county of Honolulu in accordance with this section.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 2001.)

Note

1. Semicolon should be underscored.

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the General Appropriations Act of 2001.

SECTION 2. DEFINITIONS. Unless otherwise clear from the context, as used in this Act:

- (a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.
- (b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, Office of Hawaiian Affairs and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations where used to denote the expending agency shall mean the following:

AGR	Department of Agriculture
AGS	Department of Accounting and General Services
ATG	Department of the Attorney General
BED	Department of Business, Economic Development and Tourism
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
EDN	Department of Education
GOV	Office of the Governor
HHL	Department of Hawaiian Home Lands
HMS	Department of Human Services
HRD	Department of Human Resources Development
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
CCH	City and County of Honolulu
COH	County of Hawaii
COK	County of Kauai
COM	County of Maui

- (c) "Means of financing," or "MOF" means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are

followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

- A general funds
 - B special funds
 - C general obligation bond fund
 - D general obligation bond fund with debt service cost to be paid from special funds
 - E revenue bond funds
 - J federal aid interstate funds
 - K federal aid primary funds
 - L federal aid secondary funds
 - M federal aid urban funds
 - N other federal funds
 - R private contributions
 - S county funds
 - T trust funds
 - U interdepartmental transfers
 - W revolving funds
 - X other funds
- (d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.
- (e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2001, and ending June 30, 2003. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
A. ECONOMIC DEVELOPMENT							
1.	BED101 - BUSINESS DEVELOPMENT & MARKETING						
	OPERATING		BED	15.00* 1,746,007A		15.00* 1,746,007A	
2.	BED102 - BUSINESS SERVICES						
	OPERATING		BED	12.00* 1,342,032A		12.00* 1,392,032A	
			BED	196,869B		196,869B	
			BED	3.00* 5,121,666W		3.00* 5,121,666W	
3.	BED107 - FOREIGN TRADE ZONE						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		BED	21.00*		21.00*	
				1,973,377B		1,973,377B	
4.	BED120 - ENERGY AND NATURAL RESOURCES						
	OPERATING		BED	12.00*		12.00*	
			BED	1,394,333A		1,219,333A	
			BED	400,000B		400,000B	
			BED	3,000,000N		3,000,000N	
			BED	100,000W		100,000W	
5.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT						
	OPERATING		BED	32.00*		32.00*	
				1,931,253A		1,831,253A	
6.	BED113 - TOURISM						
	OPERATING		BED	7.00*		7.00*	
				100,782,012B		100,782,012B	
7.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE						
	OPERATING		AGR	10.00*		10.00*	
			AGR	908,354B		880,954B	
				5,000,000W		5,000,000W	
8.	AGR122 - PLANT PEST AND DISEASE CONTROL						
	OPERATING		AGR	94.00*		94.00*	
			AGR	3,984,634A		3,984,634A	
			AGR	300,966N		300,966N	
			AGR	363,600T		363,600T	
				1.00*		1.00*	
			AGR	171,165U		171,165U	
			AGR	32,330W		58,360W	
	INVESTMENT CAPITAL		AGS	7,054,000C		C	
9.	AGR131 - RABIES QUARANTINE						
	OPERATING		AGR	45.00*		45.00*	
				2,817,726B		2,817,726B	
10.	AGR132 - ANIMAL DISEASE CONTROL						
	OPERATING		AGR	23.50*		23.50*	
			AGR	1,110,869A		1,110,869A	
				282,481U		282,481U	
11.	LNR172 - FORESTRY - PRODUCTS DEVELOPMENT						
	OPERATING		LNR	19.00*		19.00*	
			LNR	660,330A		660,330A	
			LNR	500,000B		600,000B	
				3.00*		3.00*	
			LNR	413,617N		413,617N	
12.	AGR151 - QUALITY AND PRICE ASSURANCE						
	OPERATING		AGR	31.00*		31.00*	
				1,320,155A		1,320,155A	
				2.00*		2.00*	
			AGR	222,400B		222,400B	
			AGR	34,424N		52,424N	
			AGR	300,000T		300,000T	
			AGR	581,417W		581,417W	
13.	AGR171 - AGRICULTURAL DEVELOPMENT & MARKETING						
				20.00*		20.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	AGR	1,286,391A		1,286,391A	
			AGR	75,000N		75,000N	
14.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT						
		OPERATING	AGR	2.00*		2.00*	
				261,684A		261,684A	
				2.50*		2.50*	
			AGR	372,807B		342,907B	
				18.50*		18.50*	
		INVESTMENT CAPITAL	AGR	1,346,993W		1,346,993W	
			AGR	5,000,000C		C	
15.	AGR161 - AGRIBUSINESS DEVELOPMENT & RESEARCH						
		OPERATING	AGR	1.00*		1.00*	
			AGR	788,447A		788,447A	
			AGR	971,826W		971,826W	
16.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE						
		OPERATING	AGR	29.00*		29.00*	
		INVESTMENT CAPITAL	AGS	1,385,514A		1,385,514A	
				961,000C		1,141,000C	
17.	LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE						
		OPERATING	LNR	9.00*		9.00*	
			LNR	708,620A		708,620A	
			LNR	100,000B		100,000B	
			LNR	308,210N		308,210N	
		INVESTMENT CAPITAL	LNR	258,000C		C	
18.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM						
		OPERATING	AGR	8.00*		8.00*	
			AGR	473,182A		473,182A	
			AGR	30,000B		30,000B	
			AGR	74,962N		74,962N	
19.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION						
		OPERATING	BED	1.50*		1.50*	
				1,349,177A		1,349,177A	
				1.50*		1.50*	
			BED	1,961,442B		1,961,442B	
			BED	2,000,000N		2,000,000N	
			BED	1,500,000W		1,500,000W	
		INVESTMENT CAPITAL	BED	114,000C		C	
			BED	8,405,000E		E	
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORP.						
		OPERATING	BED	4,104,473W		4,104,473W	
21.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY						
		OPERATING	BED	959,447A		959,447A	
			BED	1,981,000B		2,233,000B	
			BED	6,519,648N		6,519,648N	
		INVESTMENT CAPITAL	BED	1,169,000C		346,000C	
			BED	2,000,000N		N	
22.	LNR141 - WATER AND LAND DEVELOPMENT						
		OPERATING	LNR	3.00*		3.00*	
			LNR	269,859A		269,859A	
			LNR	110,000W		110,000W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	LNR	771,000C		4,800,000C	
23.		BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY					
		OPERATING	BED	2.00*		2.00*	
			BED	122,301A		122,301A	
			BED	3,300,000B		3,300,000B	
		INVESTMENT CAPITAL	BED	11,250,000C		1,250,000C	
24.		BED151 - ALOHA TOWER DEVELOPMENT CORPORATION					
		OPERATING	BED	1.00*		1.00*	
				1,503,552B		1,503,552B	
25.		BED152 - BARBERS POINT NAVAL AIR STATION					
		OPERATING					

B. EMPLOYMENT

1.		LBR111 - PLACEMENT SERVICES					
		OPERATING	LBR	4.30*		4.30*	
			LBR	285,967A		285,967A	
			LBR	9,716,267B		9,716,267B	
			LBR	119.20*		119.20*	
			LBR	47,744,278N		47,744,278N	
			LBR	1,228,307U		1,228,307U	
2.		LBR135 - WORKFORCE DEVELOPMENT COUNCIL					
		OPERATING	LBR	3.00*		3.00*	
			LBR	152,950A		152,950A	
			LBR	413,110N		413,110N	
3.		LBR143 - OCCUPATIONAL SAFETY & HEALTH					
		OPERATING	LBR	26.00*		26.00*	
			LBR	1,024,518A		1,024,518A	
			LBR	504,161B		504,161B	
			LBR	26.00*		26.00*	
			LBR	1,690,856N		1,690,856N	
			LBR	18.00*		18.00*	
			LBR	1,232,325W		1,232,325W	
4.		LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES					
		OPERATING	LBR	28.35*		28.35*	
			LBR	1,068,815A		1,068,815A	
			LBR	53,131U		53,131U	
5.		LBR153 - CIVIL RIGHTS COMMISSION					
		OPERATING	LBR	21.50*		21.50*	
			LBR	1,002,794A		1,002,794A	
			LBR	4.00*		4.00*	
			LBR	420,208N		420,208N	
6.		LBR161 - PUBLIC AND PRIVATE EMPLOYMENT					
		OPERATING	LBR	2.00*		2.00*	
			LBR	509,667A		509,667A	
7.		LBR171 - UNEMPLOYMENT COMPENSATION					
		OPERATING	LBR	166,538,974B		166,538,974B	
			LBR	231.90*		231.90*	
			LBR	13,240,597N		13,240,597N	
8.		LBR183 - DISABILITY COMPENSATION					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		LBR	116.00*		116.00*	
				4,297,493A		4,297,493A	
				3.00*		3.00*	
			LBR	20,675,713B		20,675,713B	
9.	HMS802 - VOCATIONAL REHABILITATION						
	OPERATING		HMS	26.17*		26.17*	
				3,832,490A		3,826,611A	
				90.33*		90.33*	
			HMS	9,644,265N		9,622,544N	
			HMS	1,330,200W		1,330,200W	
10.	LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS						
	OPERATING		LBR	8.88*		8.88*	
				638,322A		638,322A	
				29.12*		29.12*	
			LBR	2,170,983N		2,170,983N	
11.	LBR902 - GENERAL ADMINISTRATION						
	OPERATING		LBR	29.12*		29.12*	
				1,398,463A		1,398,463A	
				37.22*		37.22*	
			LBR	2,712,315N		2,703,414N	
12.	LBR903 - OFFICE OF COMMUNITY SERVICES						
	OPERATING		LBR	5.00*		5.00*	
				5,729,254A		5,267,029A	
				3.00*		3.00*	
			LBR	5,821,458N		5,821,458N	
13.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD						
	OPERATING		LBR	12.00*		12.00*	
				627,529A		627,529A	
C. TRANSPORTATION FACILITIES							
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT						
	OPERATING		TRN	646.75*		646.75*	
	INVESTMENT CAPITAL		TRN	74,339,990B		73,812,114B	
			TRN	12,950,000B		11,450,000B	
			TRN	4,050,000N		N	
2.	TRN104 - GENERAL AVIATION						
	OPERATING		TRN	30.00*		30.00*	
	INVESTMENT CAPITAL		TRN	4,166,937B		4,133,368B	
			TRN	1,500,000B		B	
			TRN	2,830,000N		N	
3.	TRN111 - HILO INTERNATIONAL AIRPORT						
	OPERATING		TRN	79.00*		79.00*	
	INVESTMENT CAPITAL		TRN	9,171,330B		7,850,163B	
			TRN	15,840,000B		1,850,000B	
			TRN	2,000,000N		N	
4.	TRN114 - KONA INTERNATIONAL AIRPORT AT KE'AHOLE						
	OPERATING		TRN	93.00*		93.00*	
	INVESTMENT CAPITAL		TRN	9,249,017B		8,883,195B	
			TRN	2,664,000B		1,200,000B	
			TRN	830,000N		N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
5.	TRN116	WAIMEA-KOHALA AIRPORT					
		OPERATING	TRN	2.00*		2.00*	
		INVESTMENT CAPITAL	TRN	243,998B		152,948B	
				200,000B		B	
6.	TRN118	UPOLU AIRPORT					
		OPERATING	TRN	43,539B		28,389B	
7.	TRN131	KAHULUI AIRPORT					
		OPERATING	TRN	171.00*		171.00*	
		INVESTMENT CAPITAL	TRN	15,715,433B		15,715,544B	
			TRN	1,850,000B		3,500,000B	
			TRN	N		500,000N	
8.	TRN133	HANA AIRPORT					
		OPERATING	TRN	2.00*		2.00*	
				120,472B		200,772B	
9.	TRN135	KAPALUA AIRPORT					
		OPERATING	TRN	6.00*		6.00*	
				957,254B		1,010,194B	
10.	TRN141	MOLOKAI AIRPORT					
		OPERATING	TRN	15.00*		15.00*	
				1,458,569B		2,028,149B	
11.	TRN143	KALAUPAPA AIRPORT					
		OPERATING	TRN	1.00*		1.00*	
				198,144B		198,144B	
12.	TRN151	LANAI AIRPORT					
		OPERATING	TRN	10.00*		10.00*	
		INVESTMENT CAPITAL	TRN	1,867,668B		1,315,968B	
			TRN	150,000B		500,000B	
			TRN	3,600,000N		N	
			TRN	1,000,000R		R	
13.	TRN161	LIHUE AIRPORT					
		OPERATING	TRN	107.00*		107.00*	
		INVESTMENT CAPITAL	TRN	11,219,339B		10,363,945B	
			TRN	9,450,000B		800,000B	
			TRN	6,500,000N		N	
14.	TRN163	PORT ALLEN AIRPORT					
		OPERATING	TRN	1,860B		1,860B	
		INVESTMENT CAPITAL	TRN	250,000B		1,000,000B	
15.	TRN195	AIRPORTS ADMINISTRATION					
		OPERATING	TRN	115.00*		115.00*	
		INVESTMENT CAPITAL	TRN	112,241,478B		104,177,480B	
			TRN	10,450,000B		11,900,000B	
			TRN	100,000N		100,000N	
16.	TRN301	HONOLULU HARBOR					
		OPERATING	TRN	123.00*		123.00*	
		INVESTMENT CAPITAL	TRN	11,925,437B		11,444,837B	
			TRN	2,475,000B		4,400,000B	
			TRN	51,500,000E		E	
17.	TRN303	KALAELOA BARBERS POINT HARBOR					

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	TRN	3.00*		3.00*	
		INVESTMENT CAPITAL	TRN	464,122B		464,122B	
				400,000B		4,900,000B	
18.	TRN305	KEWALO BASIN					
		OPERATING	TRN	2.00*		2.00*	
				888,328B		869,328B	
19.	TRN311	HILO HARBOR					
		OPERATING	TRN	11.00*		11.00*	
		INVESTMENT CAPITAL	TRN	1,315,018B		1,478,618B	
			TRN	3,350,000B		2,000,000B	
20.	TRN313	KAWAIIHAE HARBOR					
		OPERATING	TRN	4.00*		4.00*	
		INVESTMENT CAPITAL	TRN	554,843B		535,843B	
				600,000B		B	
21.	TRN331	KAHULUI HARBOR					
		OPERATING	TRN	15.00*		15.00*	
		INVESTMENT CAPITAL	TRN	1,611,322B		1,806,622B	
			TRN	450,000B		1,600,000B	
			TRN	2,500,000E		E	
22.	TRN341	KAUNAKAKAI HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				282,336B		302,336B	
23.	TRN361	NAWILIWILI HARBOR					
		OPERATING	TRN	14.00*		14.00*	
		INVESTMENT CAPITAL	TRN	1,547,043B		1,475,043B	
			TRN	6,670,000B		1,000,000B	
24.	TRN363	PORT ALLEN HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				313,712B		349,712B	
25.	TRN351	KAUMALAPAU HARBOR					
		OPERATING					
26.	TRN395	HARBORS ADMINISTRATION					
		OPERATING	TRN	61.00*		61.00*	
		INVESTMENT CAPITAL	TRN	38,652,182B		40,205,321B	
				4,100,000B		1,725,000B	
27.	TRN501	OAHU HIGHWAYS					
		OPERATING	TRN	264.00*		264.00*	
		INVESTMENT CAPITAL	TRN	43,968,549B		42,724,334B	
			TRN	22,370,000E		4,870,000E	
			TRN	10,440,000N		2,645,000N	
28.	TRN511	HAWAII HIGHWAYS					
		OPERATING	TRN	126.00*		126.00*	
		INVESTMENT CAPITAL	TRN	20,024,067B		18,487,861B	
			TRN	2,500,000B		B	
			TRN	6,800,000E		2,225,000E	
			TRN	20,150,000N		2,890,000N	
29.	TRN531	MAUI HIGHWAYS					
				79.00*		79.00*	

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	TRN	13,544,792B		14,504,690B	
		INVESTMENT CAPITAL	TRN	500,000B		B	
			TRN	9,200,000E		4,850,000E	
			TRN	3,200,000N		N	
			TRN	1,000,000S		S	
30.	TRN541	- MOLOKAI HIGHWAYS					
				12.00*		12.00*	
		OPERATING	TRN	3,328,468B		3,242,714B	
		INVESTMENT CAPITAL	TRN	3,500,000E		135,000E	
			TRN	N		530,000N	
31.	TRN551	- LANAI HIGHWAYS					
				4.00*		4.00*	
		OPERATING	TRN	825,231B		769,649B	
32.	TRN561	- KAUAI HIGHWAYS					
				51.00*		51.00*	
		OPERATING	TRN	9,433,545B		9,793,099B	
		INVESTMENT CAPITAL	TRN	750,000E		3,215,000E	
			TRN	N		8,000,000N	
33.	TRN595	- HIGHWAYS ADMINISTRATION					
				79.00*		79.00*	
		OPERATING	TRN	65,884,719B		70,375,956B	
			TRN	2,330,000N		6,570,000N	
		INVESTMENT CAPITAL	TRN	21,600,000E		17,125,000E	
			TRN	18,800,000N		16,000,000N	
34.	TRN597	- HIGHWAY SAFETY					
				36.00*		36.00*	
		OPERATING	TRN	5,587,437B		5,572,217B	
				3.00*		3.00*	
			TRN	958,946N		958,946N	
35.	TRN995	- GENERAL ADMINISTRATION					
				96.00*		96.00*	
		OPERATING	TRN	11,796,449B		11,821,558B	
			TRN	3,397,054N		1,900,000N	
			TRN	112,500R		112,500R	
D. ENVIRONMENTAL PROTECTION							
1.	HTH840	- ENVIRONMENTAL MANAGEMENT					
				56.00*		56.00*	
		OPERATING	HTH	2,774,081A		2,774,081A	
				50.20*		50.20*	
			HTH	8,022,268B		8,022,268B	
				41.40*		41.40*	
			HTH	6,030,754N		6,030,754N	
				52.40*		52.40*	
		INVESTMENT CAPITAL	HTH	96,960,078W		96,950,078W	
			HTH	3,645,000C		3,645,000C	
			HTH	18,226,000N		18,226,000N	
2.	AGR846	- PESTICIDES					
				16.00*		16.00*	
		OPERATING	AGR	642,626A		642,626A	
			AGR	350,000N		350,000N	
				4.00*		4.00*	

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			AGR	650,751W		650,751W	
3.	LNR401 -	AQUATIC RESOURCES					
	OPERATING		LNR	27.00*		27.00*	
			LNR	2,153,565A		2,153,565A	
			LNR	1.00*		1.00*	
			LNR	1,164,717N		1,164,717N	
4.	LNR402 -	FORESTS AND WILDLIFE RESOURCES					
	OPERATING		LNR	54.50*		54.50*	
			LNR	2,730,341A		2,700,341A	
			LNR	714,741B		628,235B	
			LNR	6.50*		6.50*	
	INVESTMENT CAPITAL		LNR	1,372,834N		1,372,834N	
			LNR	65,000C		116,000C	
5.	LNR404 -	WATER RESOURCES					
	OPERATING		LNR	19.00*		19.00*	
			LNR	1,590,880A		1,561,239A	
			LNR	150,000B		137,600B	
6.	LNR405 -	CONSERVATION & RESOURCES ENFORCEMENT					
	OPERATING		LNR	97.50*		97.50*	
			LNR	4,658,091A		4,658,091A	
			LNR	18.00*		18.00*	
			LNR	1,595,524B		1,595,524B	
			LNR	2.50*		2.50*	
			LNR	637,931N		637,931N	
			LNR	1.00*		1.00*	
			LNR	11,660W		11,660W	
7.	LNR407 -	NATURAL AREA RESERVES & MANAGEMENT					
	OPERATING		LNR	27.00*		27.00*	
			LNR	1,178,590A		1,178,590A	
			LNR	1,800,000B		1,800,000B	
8.	HTH850 -	POLICY DVLPMENT, COORD & ANLYS FOR NAT P ENVR					
	OPERATING		HTH	5.00*		5.00*	
			HTH	240,046A		240,046A	
9.	LNR906 -	LNR-NATURAL PHYSICAL ENVIRONMENT					
	OPERATING		LNR	34.00*		34.00*	
			LNR	1,669,455A		1,669,455A	
			LNR	139,397B		79,397B	
	INVESTMENT CAPITAL		LNR	11,860,000C		2,060,000C	
10.	HTH849 -	ENVIRONMENTAL HEALTH ADMINISTRATION					
	OPERATING		HTH	15.50*		15.50*	
			HTH	705,108A		705,108A	
			HTH	18.50*		18.50*	
			HTH	1,598,532N		1,598,532N	
			HTH	10.00*		10.00*	
			HTH	2,871,616W		2,871,616W	
E. HEALTH							
1.	HTH101 -	TUBERCULOSIS CONTROL					
	OPERATING		HTH	33.00*		33.00*	
			HTH	2,186,073A		2,147,689A	
			HTH	2.00*		2.00*	

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	HTH AGS	1,210,938N 425,000C		1,210,938N	C
2.	HTH111	- HANSEN'S DISEASE SERVICES					
	OPERATING		HTH	71.00* 4,326,362A		71.00* 4,326,362A	
			HTH	3.00* 695,669N		3.00* 695,669N	
3.	HTH121	- STD/AIDS PREVENTION SERVICES					
	OPERATING		HTH	15.00* 5,343,236A		15.00* 5,343,236A	
			HTH	4.50* 4,672,303N		4.50* 4,672,303N	
4.	HTH131	- EPIDEMIOLOGY SERVICES					
	OPERATING		HTH	19.00* 1,243,245A		19.00* 1,243,245A	
			HTH	22.00* 4,200,000N		22.00* 4,200,000N	
5.	HTH141	- DENTAL DISEASES					
	OPERATING		HTH	25.60* 1,614,436A		25.60* 1,513,436A	
6.	HTH180	- CHRONIC DISEASE MANAGEMENT AND CONTROL					
	OPERATING		HTH	20.80* 1,063,117A		20.80* 1,063,117A	
			HTH	2,642,740N		2,642,760N	
7.	HTH165	- WOMEN, INFANTS & CHILDREN (WIC) SERVICES					
	OPERATING		HTH	116.50* 33,677,385N		116.50* 33,677,385N	
8.	HTH501	- DEVELOPMENTAL DISABILITIES					
	OPERATING		HTH	263.75* 40,188,385A		263.75* 44,796,502A	
	INVESTMENT CAPITAL		AGS	275,000C		C	
9.	HTH530	- CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES					
	OPERATING		HTH	105.00* 8,467,205A		105.00* 8,454,205A	
			HTH	3.00* 615,059B		3.00* 615,059B	
			HTH	34.00* 3,651,427N		34.00* 3,582,677N	
10.	HTH540	- SCHOOL HEALTH SERVICES					
	OPERATING						
11.	HTH550	- MATERNAL & CHILD HEALTH SERVICES					
	OPERATING		HTH	20.00* 23,727,771A		20.00* 27,269,157A	
			HTH	300,000B		300,000B	
			HTH	28.00* 6,048,724N		28.00* 6,048,724N	
			HTH	1.00* 250,000U		1.00* 250,000U	
12.	HTH570	- COMMUNITY HEALTH NURSING					

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		HTH	442.00*		442.00*	
				13,662,502A		13,662,502A	
13.	HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM						
	OPERATING		HTH	13.00*		13.00*	
				36,513,275A		36,282,329A	
			HTH	3.00*		3.00*	
				552,286N		552,286N	
14.	HTH595 - HEALTH RESOURCES ADMINISTRATION						
	OPERATING		HTH	47.00*		47.00*	
				5,613,031A		5,603,231A	
			HTH	3.00*		3.00*	
				75,999,462B		55,021,102B	
			HTH	6.00*		6.00*	
				774,977N		774,977N	
			HTH	4,500,000T		4,500,000T	
	INVESTMENT CAPITAL		HTH	4,430,000C		270,000C	
15.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION						
	OPERATING		HTH	2,000,000A		16,000,000A	
				2,836.25*		2,836.25*	
			HTH	246,519,978B		246,519,978B	
	INVESTMENT CAPITAL		HTH	6,934,000C		5,577,000C	
16.	SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES						
	OPERATING		SUB	2,535,000A			A
17.	HTH420 - ADULT MENTAL HEALTH - OUTPATIENT						
	OPERATING		HTH	223.00*		223.00*	
				44,012,756A		50,312,756A	
			HTH	2,507,430B		2,507,430B	
			HTH	1,178,900N		1,178,900N	
18.	HTH430 - ADULT MENTAL HEALTH - INPATIENT						
	OPERATING		HTH	561.50*		561.50*	
				28,880,422A		28,880,422A	
19.	HTH440 - ALCOHOL & DRUG ABUSE						
	OPERATING		HTH	7.00*		7.00*	
				8,512,538A		8,512,538A	
			HTH	150,000B		150,000B	
				2.00*		2.00*	
			HTH	9,366,345N		9,366,345N	
20.	HTH460 - CHILD & ADOLESCENT MENTAL HEALTH						
	OPERATING		HTH	197.00*		197.00*	
				89,904,235A		89,904,235A	
			HTH	7,477,406B		7,477,406B	
			HTH	616,083N		616,083N	
21.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION						
	OPERATING		HTH	116.00*		116.00*	
				13,975,850A		13,975,850A	
			HTH	736,873B		736,873B	
				4.00*		4.00*	
			HTH	1,235,570N		1,235,570N	
			HTH	2,250,000U		2,250,000U	
22.	HTH610 - ENVIRONMENTAL HEALTH SERVICES						

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
				139.00*		139.00*	
	OPERATING		HTH	5,657,842A		5,657,842A	
				6.00*		6.00*	
			HTH	595,602B		595,602B	
				7.00*		7.00*	
			HTH	515,230N		515,230N	
				2.00*		2.00*	
			HTH	74,974U		74,974U	
23.	HTH710 - STATE LABORATORY SERVICES			86.00*		86.00*	
	OPERATING		HTH	4,906,522A		4,777,522A	
	INVESTMENT CAPITAL		AGS	872,000C		C	
24.	HTH720 - MED FACILITIES - STDs, INSPECTION, LICENSING			15.90*		15.90*	
	OPERATING		HTH	950,360A		950,360A	
				20.70*		20.70*	
			HTH	1,559,994N		1,559,994N	
25.	HTH906 - COMPREHENSIVE HEALTH PLANNING			8.00*		8.00*	
	OPERATING		HTH	384,585A		428,030A	
			HTH	79,000B		29,000B	
26.	HTH760 - HEALTH STATUS MONITORING			29.00*		29.00*	
	OPERATING		HTH	1,384,171A		1,384,171A	
			HTH	250,000B		250,000B	
				2.00*		2.00*	
			HTH	397,214N		397,214N	
27.	HTH905 - POLICY DEV & ADVOCACY FOR DEV DISABILITIES			1.50*		1.50*	
	OPERATING		HTH	84,039A		84,039A	
				6.50*		6.50*	
			HTH	433,728N		433,728N	
28.	HTH907 - GENERAL ADMINISTRATION			115.50*		115.50*	
	OPERATING		HTH	5,730,367A		5,730,367A	
			HTH	795,901N		818,751N	
	INVESTMENT CAPITAL		AGS	300,000C		C	

F. SOCIAL SERVICES

1. HMS301 - CHILD WELFARE SERVICES

				256.19*		256.19*	
	OPERATING		HMS	20,363,900A		20,354,235A	
			HMS	300,000B		300,000B	
				184.31*		184.31*	
			HMS	24,327,216N		25,027,126N	
			HMS	425,000W		425,000W	

2. HMS302 - CHILD CARE SERVICES

				25.00*		25.00*	
	OPERATING		HMS	1,566,683A		1,566,683A	
				1.00*		1.00*	
			HMS	5,256,153N		5,256,153N	

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
3.	HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS						
	OPERATING		HMS	23,581,347A		24,290,829A	
			HMS	13,264,507N		13,981,547N	
4.	HMS305 - CHILD CARE PAYMENTS						
	OPERATING		HMS	16,574,607A		16,574,607A	
			HMS	25,609,954N		25,609,954N	
5.	HMS501 - YOUTH SERVICES ADMINISTRATION						
	OPERATING		HMS	22.00*		22.00*	
			HMS	1,297,943A		1,297,943A	
			HMS	4,458,308N		4,458,308N	
6.	HMS502 - YOUTH SERVICES PROGRAM						
	OPERATING		HMS	3,522,574A		3,522,574A	
			HMS	870,342N		870,342N	
7.	HMS503 - YOUTH RESIDENTIAL PROGRAMS						
	OPERATING		HMS	76.50*		76.50*	
			HMS	5,293,166A		5,507,880A	
			HMS	1,802,704N		1,802,704N	
				.50*		.50*	
	INVESTMENT CAPITAL		HMS	11,940U		11,940U	
			AGS	200,000C		C	
8.	DEF112 - SERVICES TO VETERANS						
	OPERATING		DEF	24.00*		24.00*	
				1,215,616A		1,147,941A	
9.	HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH						
	OPERATING		HMS	80.58*		100.08*	
			HMS	7,692,398A		7,679,158A	
				.92*		18.42*	
			HMS	5,055,269N		5,039,838N	
			HMS	10,000R		10,000R	
			HMS	280,106U		280,106U	
10.	HMS201 - TEMP ASSISTANCE TO NEEDY FAMILIES						
	OPERATING		HMS	12,269,081A		12,469,081A	
			HMS	61,600,014N		55,285,514N	
11.	HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED						
	OPERATING		HMS	22,426,631A		22,819,120A	
12.	HMS204 - GENERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	24,761,632A		24,761,632A	
13.	HMS206 - FEDERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	1,491,331N		1,491,331N	
14.	HMS203 - TEMP ASSISTANCE TO OTHER NEEDY FAMILIES						
	OPERATING		HMS	37,283,204A		36,741,096A	
15.	BED220 - RENTAL HOUSING SERVICES						
	OPERATING		BED	1,007,337A		1,007,337A	
				198.00*		198.00*	
			BED	42,130,589N		42,130,589N	
				23.00*		23.00*	
	INVESTMENT CAPITAL		BED	3,722,544W		3,722,544W	
			BED	3,375,000C		11,125,000C	

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			BED	7,347,000N			N
16.	BED807 - TEACHER HOUSING OPERATING		BED	252,131W		252,131W	
17.	BED229 - HCDCH ADMINISTRATION			29.00*		29.00*	
	OPERATING		BED	10,226,428N		10,226,428N	
				20.00*		20.00*	
	INVESTMENT CAPITAL		BED	2,767,712W		2,767,712W	
			BED	15,580,000N		15,580,000N	
18.	BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP			11.00*		11.00*	
	OPERATING		BED	1,383,262N		1,383,262N	
				11.00*		11.00*	
			BED	1,991,359W		1,991,359W	
19.	BED223 - BROADENED HOMESITE OWNERSHIP						
	OPERATING		BED	240,809W		240,809W	
20.	BED227 - HOUSING FINANCE						
	OPERATING		BED	3,000,000N		3,000,000N	
				11.00*		11.00*	
			BED	1,386,881W		1,386,881W	
21.	BED222 - RENTAL ASSISTANCE SERVICES			5.25*		5.25*	
	OPERATING		BED	1,938,054A		1,938,054A	
				11.75*		11.75*	
			BED	25,343,291N		25,343,291N	
22.	BED224 - HOMELESS SERVICES			4.00*		4.00*	
	OPERATING		BED	4,869,640A		4,869,640A	
			BED	1,369,108N		1,369,108N	
	INVESTMENT CAPITAL		BED	420,000C		C	
23.	BED231 - RENTAL HOUSING TRUST FUND						
	OPERATING		BED	6,653,827T		6,653,827T	
24.	HMS230 - HEALTH CARE PAYMENTS						
	OPERATING		HMS	173,476,763A		165,068,225A	
			HMS	234,824,015N		225,987,654N	
			HMS	10,341,215U		10,341,215U	
25.	HMS603 - HOME AND COMMUNITY BASED CARE SERVICES						
	OPERATING		HMS	13,467,039A		13,467,039A	
			HMS	39,375,341N		47,611,435N	
			HMS	22,064,862U		26,923,279U	
26.	HMS245 - QUEST HEALTH CARE PAYMENTS						
	OPERATING		HMS	120,054,939A		137,123,743A	
			HMS	158,896,301N		184,771,942N	
27.	HMS236 - ELIG DETER. & EMPLOYMT RELATED SVCS			335.17*		335.17*	
	OPERATING		HMS	11,564,292A		11,564,292A	
				259.83*		259.83*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			HMS	13,319,822N		13,319,822N	
28.	HMS238	- DISABILITY DETERMINATION					
	OPERATING		HMS	45.00*		45.00*	
				4,798,445N		4,798,445N	
29.	ATG500	- CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	52.36*		52.36*	
				1,780,382A		1,738,509A	
				128.70*		128.70*	
			ATG	13,596,307N		13,515,026N	
				13.94*		13.94*	
			ATG	2,645,885T		2,645,885T	
30.	HMS237	- EMPLOYMENT & TRAINING					
	OPERATING		HMS	517,033A		517,033A	
			HMS	1,197,541N		1,197,541N	
31.	HHL602	- PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMS TDS					
	OPERATING		HHL	33.00*		33.00*	
				1,359,546A		1,359,546A	
				85.00*		85.00*	
			HHL	6,013,558B		6,013,558B	
32.	HTH904	- EXECUTIVE OFFICE ON AGING					
	OPERATING		HTH	3.55*		3.55*	
				6,102,342A		5,793,342A	
				7.45*		7.45*	
	INVESTMENT CAPITAL		HTH	5,875,828N		5,886,044N	
			AGS	505,000C		C	
33.	HTH520	- PRG DEV, COORD OF SVS, ACCESS FOR PERS W/DISABILITIES					
	OPERATING		HTH	5.00*		5.00*	
				725,960A		715,960A	
34.	HMS902	- GENERAL SUPPORT FOR HEALTH CARE PAYMENTS					
	OPERATING		HMS	104.50*		104.50*	
				8,889,569A		8,902,004A	
				108.50*		108.50*	
			HMS	15,945,620N		15,958,055N	
35.	HMS903	- GEN SPPT FOR BEN, EMPLOYMT & SPPT SVCS					
	OPERATING		HMS	57.03*		57.03*	
				10,088,832A		10,545,940A	
				47.97*		47.97*	
			HMS	19,327,103N		25,091,603N	
36.	HMS904	- GENERAL ADMINISTRATION (DHS)					
	OPERATING		HMS	173.84*		173.84*	
				7,736,317A		7,404,415A	
				15.16*		15.16*	
	INVESTMENT CAPITAL		HMS	1,462,437N		1,300,089N	
			HMS	250,000C		C	
37.	HMS901	- GENERAL SUPPORT FOR SOCIAL SERVICES					
	OPERATING		HMS	18.56*		27.06*	
				3,285,306A		1,462,860A	
				10.44*		18.94*	
			HMS	2,372,151N		1,395,071N	

PROGRAM APPROPRIATIONS

				APPROPRIATIONS			
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
G. FORMAL EDUCATION							
1. EDN100 - SCHOOL-BASED BUDGETING							
	OPERATING		EDN	11,849.50*		11,815.50*	
			EDN	884,044,285A		929,885,433A	
			EDN	5,372,924B		5,372,924B	
			EDN	61,824,930N		61,199,930N	
			EDN	3,410,000T		3,410,000T	
			EDN	928,135U		928,135U	
			EDN	3,000,000W		3,000,000W	
	INVESTMENT CAPITAL		AGS	56,155,000B		47,090,000B	
			AGS	12,262,000C		2,500,000C	
			AGS	125,000R		R	
			EDN	250,000B		250,000B	
			EDN	493,000C		C	
2. EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES							
	OPERATING		EDN	4,207.50*		4,291.50*	
			EDN	221,201,070A		223,086,547A	
				2.00*		2.00*	
			EDN	25,918,685N		25,918,685N	
			EDN	1,000,000U		1,000,000U	
3. EDN200 - INSTRUCTIONAL SUPPORT							
	OPERATING		EDN	220.50*		220.50*	
			EDN	18,439,063A		18,439,063A	
			EDN	2,340,205N		2,340,205N	
			EDN	800,000U		800,000U	
			EDN	750,000W		750,000W	
4. EDN300 - STATE AND DISTRICT ADMINISTRATION							
	OPERATING		EDN	404.00*		404.00*	
			EDN	27,327,522A		29,460,802A	
				2,280,731N		1,892,615N	
5. EDN400 - SCHOOL SUPPORT							
	OPERATING		EDN	1,593.60*		1,610.60*	
			EDN	108,613,109A		108,089,037A	
				720.50*		720.50*	
			EDN	18,888,750B		18,888,750B	
				3.00*		3.00*	
			EDN	32,632,649N		32,632,649N	
6. EDN500 - SCHOOL COMMUNITY SERVICE							
	OPERATING		EDN	35.50*		35.50*	
			EDN	16,635,104A		16,635,104A	
			EDN	1,939,006B		1,939,006B	
			EDN	1,889,147N		1,889,147N	
			EDN	530,000W		530,000W	
7. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS							
	OPERATING		AGS	240.00*		240.00*	
	INVESTMENT CAPITAL		AGS	23,259,540A		23,259,540A	
			AGS	50,000,000C		10,000,000C	
8. EDN407 - PUBLIC LIBRARIES							
	OPERATING		EDN	520.05*		520.05*	
			EDN	21,445,594A		21,445,594A	
			EDN	3,125,000B		3,125,000B	
			EDN	865,244N		865,244N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	AGS	5,000,000C			C
9.	UOH100	UNIVERSITY OF HAWAII, MANOA					
	OPERATING		UOH	3,426.34*		3,426.34*	
			UOH	174,483,204A		174,483,204A	
			UOH	79.75*		79.75*	
			UOH	60,416,966B		60,116,966B	
			UOH	78.06*		78.06*	
			UOH	5,411,667N		5,411,667N	
			UOH	207.75*		207.75*	
	INVESTMENT CAPITAL		UOH	61,703,671W		63,806,456W	
			UOH	750,000B		B	
			UOH	14,550,000C		C	
			UOH	E		35,000,000E	
			UOH	2,600,000N		N	
			UOH	4,382,000R		35,000,000R	
			UOH	8,834,000W		W	
10.	UOH210	UNIVERSITY OF HAWAII, HILO					
	OPERATING		UOH	354.25*		354.25*	
			UOH	17,677,813A		17,677,813A	
			UOH	14.00*		14.00*	
			UOH	7,340,557B		7,340,557B	
			UOH	394,543N		394,543N	
			UOH	11.50*		11.50*	
	INVESTMENT CAPITAL		UOH	4,084,938W		4,084,938W	
			UOH	1,200,000C		C	
			UOH	19,980,000N		N	
11.	UOH220	SMALL BUSINESS DEVELOPMENT					
	OPERATING		UOH	648,675A		648,675A	
12.	UOH700	UNIVERSITY OF HAWAII, WEST OAHU					
	OPERATING		UOH	47.50*		47.50*	
			UOH	2,260,139A		2,260,139A	
			UOH	1,200,000B		1,200,000B	
			UOH	7,000N		7,000N	
			UOH	125,000W		125,000W	
13.	UOH800	UH - COMMUNITY COLLEGES					
	OPERATING		UOH	1,522.25*		1,524.25*	
			UOH	68,315,584A		68,460,228A	
			UOH	77.50*		77.50*	
			UOH	38,937,433B		39,037,433B	
			UOH	15.60*		15.60*	
			UOH	3,540,927N		3,540,927N	
			UOH	4.50*		4.50*	
	INVESTMENT CAPITAL		UOH	4,848,882W		4,848,882W	
			AGS	2,000,000C		C	
			UOH	4,851,000C		4,964,000C	
14.	UOH900	UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
	OPERATING		UOH	322.00*		322.00*	
			UOH	164,939,049A		176,958,152A	
			UOH	4.00*		4.00*	
			UOH	1,368,128B		1,368,128B	
			UOH	4.00*		4.00*	
			UOH	457,667N		457,667N	
			UOH	100.00*		100.00*	
			UOH	45,112,127W		45,112,127W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	AGS	5,759,000C		9,649,000C	
			UOH	15,172,000C		13,434,000C	
			UOH	1,000,000W			W
H. CULTURE AND RECREATION							
1.	UOH881 - AQUARIA						
	OPERATING		UOH	13.00*		13.00*	
				516,306A		516,306A	
			UOH	7.00*		7.00*	
	INVESTMENT CAPITAL		AGS	1,718,689B		1,718,689B	
				983,000C			C
2.	AGS881 - PERFORMING & VISUAL ARTS EVENTS						
	OPERATING		AGS	10.00*		10.00*	
				2,281,143A		2,281,143A	
			AGS	9.00*		9.00*	
			AGS	4,089,064B		4,089,064B	
	INVESTMENT CAPITAL		AGS	738,787N		738,787N	
				3,458,000B		725,000B	
3.	LNR802 - HISTORIC PRESERVATION						
	OPERATING		LNR	13.00*		13.00*	
			LNR	697,364A		697,364A	
			LNR	111,431B		111,431B	
			LNR	435,841N		435,841N	
4.	LNR804 - FOREST RECREATION						
	OPERATING		LNR	36.00*		36.00*	
				1,250,983A		1,250,983A	
			LNR	3.50*		3.50*	
			LNR	311,817B		316,817B	
			LNR	3.50*		3.50*	
			LNR	511,308N		511,308N	
			LNR	505,324W		505,324W	
5.	LNR805 - RECREATIONAL FISHERIES						
	OPERATING		LNR	7.00*		7.00*	
			LNR	152,252A		152,252A	
			LNR	68,000B		68,000B	
			LNR	420,418N		420,418N	
6.	LNR806 - PARK DEVELOPMENT AND OPERATION						
	OPERATING		LNR	112.00*		112.00*	
			LNR	5,326,827A		5,332,224A	
			LNR	181,164B		181,164B	
	INVESTMENT CAPITAL		LNR	3,900,000C		3,450,000C	
7.	LNR801 - OCEAN-BASED RECREATION						
	OPERATING		LNR	92.00*		92.00*	
			LNR	14,547,220B		15,547,220B	
			LNR	700,000N		700,000N	
	INVESTMENT CAPITAL		LNR	120,000C		500,000C	
			LNR	1,060,000D		2,600,000D	
			LNR	200,000E		2,000,000E	
			LNR	855,000N		2,375,000N	
8.	AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM						
	OPERATING		AGS	39.50*		39.50*	
				6,206,172B		6,111,672B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	AGS	825,000B		275,000B	
9.	LNR807	- PARK INTERPRETATION					
		OPERATING	LNR	17.00*		17.00*	
		INVESTMENT CAPITAL	LNR	1,642,082B		1,642,082B	
				360,000B		560,000B	
10.	LNR809	- PARKS ADMINISTRATION					
		OPERATING	LNR	7.00*		7.00*	
			LNR	327,844A		319,844A	
				285,201N		285,201N	
I. PUBLIC SAFETY							
1.	PSD402	- HALAWA CORRECTIONAL FACILITY					
		OPERATING	PSD	407.00*		407.00*	
			PSD	17,348,182A		17,285,682A	
				830,523W		835,950W	
2.	PSD403	- KULANI CORRECTIONAL FACILITY					
		OPERATING	PSD	79.00*		79.00*	
				3,601,163A		3,601,163A	
3.	PSD404	- WAIAWA CORRECTIONAL FACILITY					
		OPERATING	PSD	108.00*		108.00*	
			PSD	4,079,645A		4,079,645A	
				179,392W		179,392W	
4.	PSD405	- HAWAII COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	166.00*		166.00*	
				5,896,665A		5,896,665A	
5.	PSD406	- MAUI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	187.00*		187.00*	
			PSD	6,220,655A		6,220,655A	
		INVESTMENT CAPITAL	AGS	200,000S		200,000S	
				500,000C		C	
6.	PSD407	- OAHU COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	495.00*		495.00*	
			PSD	22,317,187A		22,317,187A	
		INVESTMENT CAPITAL	AGS	615,069W		615,069W	
				91,000C		C	
7.	PSD408	- KAUAI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	68.00*		68.00*	
				2,538,789A		2,538,789A	
8.	PSD409	- WOMEN'S COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	137.00*		137.00*	
		INVESTMENT CAPITAL	AGS	5,498,119A		5,498,119A	
				163,000C		C	
9.	PSD410	- INTAKE SERVICE CENTERS					
		OPERATING	PSD	44.00*		44.00*	
				2,024,158A		2,030,626A	
10.	PSD420	- CORRECTION PROGRAM SERVICES					
				205.50*		205.50*	

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	PSD	16,596,394A		16,596,394A	
11.		PSD421 - HEALTH CARE		160.93*		160.93*	
		OPERATING	PSD	9,953,374A		9,971,048A	
12.		PSD501 - PROTECTIVE SERVICES		95.50*		95.50*	
		OPERATING	PSD	3,287,634A		3,287,634A	
				7.00*		7.00*	
			PSD	519,158N		519,158N	
				13.00*		13.00*	
			PSD	1,347,713U		1,347,713U	
13.		PSD502 - NARCOTICS ENFORCEMENT		12.00*		12.00*	
		OPERATING	PSD	548,560A		548,560A	
				4.00*		4.00*	
			PSD	288,808W		288,808W	
14.		PSD503 - SHERIFF		148.00*		148.00*	
		OPERATING	PSD	4,935,421A		4,872,256A	
				27.00*		27.00*	
			PSD	1,629,804U		1,629,804U	
15.		PSD611 - ADULT PAROLE DETERMINATIONS		2.00*		2.00*	
		OPERATING	PSD	196,355A		196,355A	
16.		PSD612 - ADULT PAROLE SUPERVISION & COUNSELING		44.00*		44.00*	
		OPERATING	PSD	1,896,361A		1,896,361A	
17.		PSD613 - CRIME VICTIM COMPENSATION COMMISSION		6.00*		6.00*	
		OPERATING	PSD	1,616,740B		1,623,740B	
18.		PSD900 - GENERAL ADMINISTRATION		143.10*		143.10*	
		OPERATING	PSD	36,065,982A		37,439,566A	
				3.00*		3.00*	
			PSD	126,401N		126,401N	
			PSD	75,065T		75,065T	
				9.00*		9.00*	
			PSD	9,578,537W		9,578,537W	
			PSD	742,980X		742,980X	
		INVESTMENT CAPITAL	AGS	153,000C			C
19.		ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION		30.00*		30.00*	
		OPERATING	ATG	1,472,294A		1,472,294A	
			ATG	2,000,000N		2,000,000N	
				12.00*		12.00*	
			ATG	1,957,216W		1,964,033W	
20.		LNR810 - PREVENTION OF NATURAL DISASTERS		3.25*		3.25*	
		OPERATING	LNR	183,276A		183,276A	
				.75*		.75*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	LNR	75,000N		75,000N	
			LNR	500,000C			C
			LNR	250,000N			N
			LNR	250,000S			S
21.	DEF110	- AMELIORATION OF PHYSICAL DISASTERS					
	OPERATING		DEF	120.80*		120.80*	
				7,212,679A		7,047,414A	
				39.70*		39.70*	
	INVESTMENT CAPITAL		DEF	7,548,563N		7,548,563N	
			AGS	985,000C		1,498,000C	
			AGS	100,000N		100,000N	
J. INDIVIDUAL RIGHTS							
1.	CCA102	- CABLE TELEVISION					
	OPERATING		CCA	4.00*		4.00*	
				1,281,402B		1,281,402B	
2.	CCA103	- CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC					
	OPERATING		CCA	23.00*		23.00*	
				2,485,979B		2,488,529B	
3.	CCA104	- FINANCIAL INSTITUTION SERVICES					
	OPERATING		CCA	29.00*		29.00*	
				2,319,678B		2,102,354B	
4.	CCA105	- PROFESSIONAL, VOCATIONAL & PERSONAL SVCS					
	OPERATING		CCA	56.00*		56.00*	
				3,739,877B		3,723,827B	
			CCA	4.00*		4.00*	
				1,421,467T		1,433,699T	
5.	BUF901	- TRANSPORTATION, COMMUNICATIONS, & UTILITIES					
	OPERATING		BUF	44.00*		44.00*	
				5,837,420B		5,837,420B	
6.	CCA106	- INSURANCE REGULATORY SERVICES					
	OPERATING		CCA	70.00*		70.00*	
			CCA	8,876,796B		8,531,177B	
				1,200,000T		200,000T	
7.	CCA110	- OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC					
	OPERATING		CCA	15.00*		15.00*	
			CCA	1,204,016B		1,204,016B	
				50,681T		50,681T	
8.	AGR812	- MEASUREMENT STANDARDS					
	OPERATING		AGR	17.00*		17.00*	
	INVESTMENT CAPITAL		AGS	632,037A		632,037A	
				3,125,000C		C	
9.	CCA111	- BUSINESS REGISTRATION					
	OPERATING		CCA	75.00*		75.00*	
				5,381,259B		5,383,659B	
10.	CCA112	- REGULATED INDUSTRIES COMPLAINTS OFFICE					
	OPERATING		CCA	14.00*		14.00*	
				5,373,089B		5,328,039B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
11.	CCA191	GENERAL SUPPORT-PROTECTION OF THE CONSUMER					
				38.00*		38.00*	
	OPERATING		CCA	2,992,783B		3,076,226B	
	INVESTMENT CAPITAL		CCA	2,000,000C		C	
12.	LTG105	ENFORCEMENT OF INFORMATION PRACTICES					
				5.00*		5.00*	
	OPERATING		LTG	340,914A		340,914A	
13.	BUF151	LEGAL ASSISTANCE IN CRIMINAL ACTIONS					
				83.00*		83.00*	
	OPERATING		BUF	7,581,298A		7,549,859A	
14.	LNR111	CONVEYANCES AND RECORDINGS					
				48.00*		48.00*	
	OPERATING		LNR	1,570,604A		1,570,604A	
				5.00*		5.00*	
			LNR	556,364B		556,364B	
15.	LTG888	COMMISSION ON THE STATUS OF WOMEN					
				1.00*		1.00*	
	OPERATING		LTG	100,637A		100,637A	

K. GOVERNMENT-WIDE SUPPORT

1.	GOV100	OFFICE OF THE GOVERNOR					
				35.00*		35.00*	
		OPERATING	GOV	3,163,542A		2,200,529A	
			GOV	R		5,000R	
		INVESTMENT CAPITAL	AGS	200,000C		C	
			GOV	1,000C		1,000C	
2.	LTG100	OFFICE OF THE LIEUTENANT GOVERNOR					
				5.00*		5.00*	
		OPERATING	LTG	816,041A		816,041A	
3.	GOV102	GOV - OTH POLICY DEVELOPMENT & COORDINATION					
				4.00*		4.00*	
		OPERATING	GOV	282,428A		282,428A	
4.	BED144	STATEWIDE PLANNING AND COORDINATION					
				19.00*		19.00*	
		OPERATING	BED	1,662,219A		1,662,219A	
				4.00*		4.00*	
			BED	972,000N		972,000N	
5.	BED103	STATEWIDE LAND USE MANAGEMENT					
				7.00*		7.00*	
		OPERATING	BED	416,893A		416,893A	
6.	BED104	HAWAII COMMUNITY DEVELOPMENT AUTHORITY					
		OPERATING					
7.	BED130	ECON PLANNING & RESEARCH					
				17.00*		17.00*	
		OPERATING	BED	916,162A		916,162A	
				3.00*		3.00*	
			BED	2,617,034B		1,292,034B	
8.	BUF101	PROGRAM PLANNING, ANALYSIS AND BUDGETING					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		BUF	51.00*		51.00*	
			BUF	122,831,542A		131,262,943A	
	INVESTMENT CAPITAL		AGS	146,546,305U		156,323,622U	
			BUF	5,000,000C		C	
			BUF	83,535,000C		77,340,000C	
9.	LTG101 - CAMPAIGN SPENDING COMMISSION						
	OPERATING		LTG	4.00*		4.00*	
				371,122T		4,399,810T	
10.	LTG102 - OFFICE OF ELECTIONS						
	OPERATING		LTG	4.00*		4.00*	
				3,301,280A		2,438,739A	
11.	TAX102 - INCOME ASSESSMENT AND AUDIT						
	OPERATING		TAX	111.00*		111.00*	
				4,228,691A		4,228,691A	
12.	TAX103 - TAX COLLECTIONS ENFORCEMENT						
	OPERATING		TAX	93.00*		93.00*	
				2,761,950A		2,761,950A	
13.	TAX105 - TAX SERVICES & PROCESSING						
	OPERATING		TAX	99.00*		99.00*	
				4,992,064A		4,992,064A	
14.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION						
	OPERATING		TAX	40.00*		40.00*	
				5,277,430A		5,177,430A	
15.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE						
	OPERATING		AGS	7.00*		7.00*	
				665,431A		665,431A	
16.	AGS102 - EXPENDITURE EXAMINATION						
	OPERATING		AGS	19.00*		19.00*	
				993,607A		993,607A	
17.	AGS103 - RECORDING AND REPORTING						
	OPERATING		AGS	12.00*		12.00*	
				537,963A		537,963A	
18.	AGS104 - INTERNAL POST AUDIT						
	OPERATING		AGS	13.00*		13.00*	
				1,291,995A		1,291,995A	
19.	BUF115 - FINANCIAL ADMINISTRATION						
	OPERATING		BUF	21.00*		21.00*	
			BUF	247,170,008A		284,396,011A	
			BUF	3,000,000T		3,000,000T	
			BUF	1.00*		1.00*	
				171,989,596U		197,021,116U	
20.	ATG100 - LEGAL SERVICES						
	OPERATING		ATG	202.15*		202.15*	
			ATG	18,171,350A		18,224,432A	
			ATG	4.00*		4.00*	
			ATG	488,894B		488,894B	
			ATG	12.00*		12.00*	
				8,770,200N		8,770,200N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			ATG	3,918,000T		3,918,000T	
				40.85*		40.85*	
			ATG	6,393,679U		6,483,760U	
				4.00*		4.00*	
			ATG	3,181,635W		3,181,635W	
21.	AGS131	- INFORMATION PROCESSING SERVICES					
	OPERATING		AGS	168.00*		168.00*	
				12,183,401A		12,162,543A	
				33.00*		33.00*	
	INVESTMENT CAPITAL		AGS	2,035,654U		2,035,654U	
			AGS	2,000,000C			C
22.	AGS161	- COMMUNICATION					
	OPERATING		AGS	7.00*		7.00*	
				2,116,267A		2,116,267A	
	INVESTMENT CAPITAL		AGS	2,325,000C		3,900,000C	
23.	HRD102	- WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF					
	OPERATING		HRD	111.00*		111.00*	
				14,244,310A		12,305,710A	
			HRD	600,000B		600,000B	
			HRD	4,886,281U		4,886,281U	
			HRD	100,000W		100,000W	
24.	HRD191	- SUPPORTING SERVICES-HUMAN RESOURCES DEVELOPMENT					
	OPERATING		HRD	11.00*		11.00*	
				1,241,044A		1,241,044A	
25.	BUF141	- RETIREMENT					
	OPERATING		BUF	109,545,372A		129,623,582A	
			BUF	140,669,317U		166,245,562U	
				55.00*		55.00*	
			BUF	5,531,594X		5,848,014X	
26.	BUF142	- HEALTH & LIFE INSURANCE BENEFITS					
	OPERATING		BUF	15.00*		15.00*	
				636,932A		636,932A	
			BUF	410,789,971T		437,232,269T	
27.	LNR101	- PUBLIC LANDS MANAGEMENT					
	OPERATING		LNR	30,000A			A
				54.00*		54.00*	
			LNR	5,521,180B		5,401,180B	
			LNR	72,634N		72,634N	
	INVESTMENT CAPITAL		AGS	1,750,000C			C
			LNR	4,505,000B		195,000B	
			LNR	125,000C		555,000C	
			LNR	4,000,000N			N
28.	AGS203	- RISK MANAGEMENT					
	OPERATING		AGS	4.00*		4.00*	
				281,308A		281,308A	
			AGS	7,825,000W		7,825,000W	
29.	AGS211	- LAND SURVEY					
	OPERATING		AGS	18.00*		18.00*	
				774,953A		774,953A	
30.	AGS223	- OFFICE LEASING					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	AGS	4.00*		4.00*	
			AGS	12,822,611A		12,825,487A	
				5,500,000U		5,500,000U	
31.	AGS221	CONSTRUCTION					
		OPERATING	AGS	19.00*		19.00*	
			AGS	1,117,414A		1,117,414A	
		INVESTMENT CAPITAL	AGS	4,000,000W		4,000,000W	
				11,807,000C		7,307,000C	
32.	AGS231	CUSTODIAL SERVICES					
		OPERATING	AGS	155.50*		155.50*	
			AGS	12,362,248A		11,790,248A	
				430,501U		430,501U	
33.	AGS232	GROUNDS MAINTENANCE					
		OPERATING	AGS	30.50*		30.50*	
				944,196A		944,196A	
34.	AGS233	BUILDING REPAIRS AND ALTERATIONS					
		OPERATING	AGS	30.00*		30.00*	
		INVESTMENT CAPITAL	AGS	2,809,737A		2,459,737A	
				5,000,000C		5,000,000C	
35.	AGS240	STATE PROCUREMENT					
		OPERATING	AGS	21.00*		21.00*	
				971,234A		971,234A	
36.	AGS244	SURPLUS PROPERTY MANAGEMENT					
		OPERATING	AGS	5.00*		5.00*	
				989,213W		989,213W	
37.	AGS251	MOTOR POOL					
		OPERATING	AGS	13.50*		13.50*	
				2,227,022W		2,187,422W	
38.	AGS252	PARKING CONTROL					
		OPERATING	AGS	26.50*		26.50*	
				2,877,232W		2,877,232W	
39.	AGS111	RECORDS MANAGEMENT					
		OPERATING	AGS	20.00*		20.00*	
				708,027A		708,027A	
40.	AGS901	GENERAL ADMINISTRATIVE SERVICES					
		OPERATING	AGS	45.00*		45.00*	
			AGS	2,218,750A		2,218,750A	
			AGS	1.00*		1.00*	
			AGS	46,615U		46,615U	
				11,257,500W		11,257,500W	
41.	SUB201	CITY AND COUNTY OF HONOLULU					
		OPERATING					
42.	SUB301	COUNTY OF HAWAII					
		OPERATING					
		INVESTMENT CAPITAL	COH	2,000,000C			C
43.	SUB401	COUNTY OF MAUI					
		OPERATING					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	COM	2,000,000C			C
44.	SUB501 - COUNTY OF KAUAI	OPERATING INVESTMENT CAPITAL	COK	660,000C			C

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that for tourism (BED 113), the Hawaii tourism authority shall submit a detailed report for expenditures comparing budget appropriations to actual expenditures for fiscal years 2000-2001 and 2001-2002 (four months actual, eight months forecasted) with accompanying explanations for variances for Hawaii convention center debt service and operations; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 5. The Governor is authorized to transfer general fund savings as may be available from the appropriated funds of any program in this Act to tourism (BED 113), for the operation and events at the Hawaii convention center; and provided further that the total amount transferred shall not exceed \$15,000,000.

SECTION 6. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$140,400 for fiscal year 2001-2002 and the sum of \$140,400 for fiscal year 2002-2003 shall be deposited into the irrigation system revolving fund to be expended for purposes of the fund; provided further that the department of agriculture shall submit a progress report on efforts made toward program self-sufficiency; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 7. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$190,558 for fiscal year 2001-2002 and the sum of \$190,558 for fiscal year 2002-2003 shall be deposited into the Hawaii agricultural development revolving fund to be expended for purposes of the fund.

TRANSPORTATION

SECTION 8. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special repair and maintenance projects for fiscal biennium 2001-2003, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 102	\$ 3,860,000	\$ 2,925,000
TRN 104	\$ 475,000	\$ 475,000

TRN 111	\$ 1,590,000	\$ 400,000
TRN 114	\$ 675,200	\$ 377,000
TRN 116	\$ 92,500	\$ -0-
TRN 118	\$ 15,000	\$ -0-
TRN 131	\$ 1,528,000	\$ 1,252,000
TRN 133	\$ -0-	\$ 93,000
TRN 135	\$ 158,000	\$ 210,000
TRN 141	\$ 380,000	\$ 954,500
TRN 143	\$ 150,000	\$ 150,000
TRN 151	\$ 641,200	\$ 75,000
TRN 161	\$ 1,577,500	\$ 632,500;

provided further that any unexpended funds shall be lapsed to the airport special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 9. Provided that of the special fund appropriation for the airports division (TRN 102-TRN 195), the following sums specified for electricity costs for fiscal biennium 2001-2003 shall be expended for only electricity as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 102	\$ 11,164,799	\$ 11,164,799
TRN 104	\$ 327,887	\$ 327,887
TRN 111	\$ 907,610	\$ 796,320
TRN 114	\$ 1,008,000	\$ 1,025,000
TRN 116	\$ 17,000	\$ 17,000
TRN 118	\$ 4,700	\$ 4,700
TRN 131	\$ 1,721,466	\$ 1,721,466
TRN 133	\$ 5,710	\$ 5,710
TRN 135	\$ 36,500	\$ 36,500
TRN 141	\$ 32,476	\$ 32,476
TRN 151	\$ 147,821	\$ 147,821
TRN 161	\$ 1,280,000	\$ 1,426,000;

and provided further that any funds unexpended for this purpose shall lapse to the airport revenue fund.

SECTION 10. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$87,735,787 for fiscal year 2001-2002 and the sum of \$79,964,859 for fiscal year 2002-2003 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Interest and principal on general obligation bonds	\$ 404,909	\$ 304,436
Interest and principal on revenue bonds	\$ 87,330,878	\$ 79,660,423;

and provided further that any funds not expended for these purposes shall be lapsed to the airport special fund.

SECTION 11. Provided that of the special fund appropriations for the harbors division (TRN 301-TRN 395), the following sums specified for special repair and maintenance projects for fiscal biennium 2001-2003, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 301	\$ 3,714,000	\$ 3,491,000
TRN 303	\$ 181,000	\$ 181,000
TRN 305	\$ 322,000	\$ 303,000
TRN 311	\$ 608,000	\$ 740,000
TRN 313	\$ 303,000	\$ 284,000
TRN 331	\$ 604,000	\$ 796,000
TRN 341	\$ 194,000	\$ 214,000
TRN 351	\$ -0-	\$ -0-
TRN 361	\$ 714,000	\$ 630,000
TRN 363	\$ 251,000	\$ 262,000
TRN 395	\$ -0-	\$ -0-;

provided further that any unexpended funds shall be lapsed to the state harbor fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; provided further this report shall include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 12. Provided that of the special fund appropriation for harbors division (TRN 301-TRN 395), the following sums specified for electricity costs for fiscal biennium 2001-2003 shall be expended for only electricity as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 301	\$ 475,000	\$ 485,000
TRN 303	\$ 31,000	\$ 31,000
TRN 305	\$ 90,000	\$ 90,000
TRN 311	\$ 25,000	\$ 25,000
TRN 313	\$ 15,000	\$ 15,000
TRN 331	\$ 100,000	\$ 100,000
TRN 341	\$ 8,000	\$ 8,000
TRN 361	\$ 74,591	\$ 74,591
TRN 363	\$ 6,271	\$ 6,271;

and provided further that any funds unexpended for this purpose shall lapse to the harbor revenue fund.

SECTION 13. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$23,855,000 for fiscal year 2001-2002 and the sum of \$25,044,000 for fiscal year 2002-2003 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Interest and principal on general obligation bonds	\$ 487,000	\$ 62,000
Interest and principal on revenue bonds	\$ 23,368,000	\$ 24,982,000;

and provided further that any funds not expended for these purposes shall be lapsed to the harbor special fund.

SECTION 14. Provided that of the special fund appropriations for harbors administration (TRN 395), the sum of \$500,000 in fiscal year 2001-2002 and the sum of \$500,000 in fiscal year 2002-2003 shall be expended from the environmental contingency fund for cleanups of oil spillage in harbors; and provided further that such expenditures shall be used only for those spillages resulting from existing underground pipeline leaks.

SECTION 15. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 595), the following sums specified for special repair and maintenance projects for fiscal biennium 2001-2003, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 501	\$22,085,000	\$20,814,000
TRN 511	\$11,105,000	\$10,418,000
TRN 531	\$ 7,385,304	\$ 9,108,545
TRN 541	\$ 2,736,000	\$ 2,666,000
TRN 551	\$ 573,000	\$ 517,000
TRN 561	\$ 6,114,535	\$ 6,476,534
TRN 595	\$ 50,000	\$ -0-;

provided further that any unexpended funds shall be lapsed to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; provided further this report shall include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 16. Provided that of the special fund appropriation for highways division (TRN 501-TRN 597), the following sums specified for electricity costs for fiscal biennium 2001-2003 shall be expended for only electricity as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
TRN 501	\$ 3,375,000	\$ 3,375,000
TRN 511	\$ 254,000	\$ 259,000
TRN 531	\$ 810,738	\$ 973,108
TRN 541	\$ 32,000	\$ 32,000
TRN 551	\$ 1,500	\$ 1,500
TRN 561	\$ 270,262	\$ 270,262
TRN 597	\$ 20,800	\$ 22,000;

and provided further that any funds unexpended for this purpose shall lapse to the highways revenue fund.

SECTION 17. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$46,664,132 for fiscal year 2001-2002 and the sum of \$51,891,036 for fiscal year 2002-2003 shall be expended for the following purposes:

<u>Purpose:</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Interest and principal on general obligation bonds	\$24,748,228	\$23,218,694
Interest and principal on revenue bonds	\$21,915,904	\$28,672,342;

and provided further that any funds not expended for this purpose shall be lapsed to the state highway fund.

ENVIRONMENTAL PROTECTION

SECTION 18. Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of \$180,000 for fiscal year 2001-2002 and the sum of \$150,000 for fiscal year 2002-2003 shall be expended for the purposes of invasive species committees; and provided further that progress reports concerning the effectiveness of invasive species programs, amounts expended for the programs broken down by cost element, means of finance, and island, and justification for all expenditures on invasive species programs shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 19. Provided that of the special fund appropriation for water resources (LNR 404), the sum of \$12,400 for fiscal year 2001-2002 shall be expended for the coordination and incorporation of the state agriculture water use and development plan into the state water projects plan; and provided further that a detailed expenditure report and progress report of this study shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 20. Provided that of the general fund appropriation for the water resources (LNR 404), the council on water resource management shall submit a detailed report on the progress of establishing the reasonable cost to be assessed to the permittees as defined by Water Use Permit Applications (Waiahole Ditch) 94 Hawaii 97 (2000); provided further that this report shall include a listing of all meetings to determine reasonable cost, any signed agreement between both parties once a reasonable cost has been established, reasons explaining delays in establishing a reasonable cost, if any, and the estimate of cost including a detailed breakdown of the cost and procedures, to comply with the Hawaii supreme court in-stream flow survey; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the 2002 regular session.

HEALTH

SECTION 21. Provided that of the federal fund appropriation for environmental management (HTH 840), the sum of \$50,000 for fiscal year 2001-2002 and the sum of \$50,000 for fiscal year 2002-2003 shall be expended to establish an assessment and monitoring program to evaluate any impact to the drinking water in the Makua Valley area due to military activities conducted within the Makua Military Reservation; provided further that the department of health shall work with the military to establish the assessment and monitoring program; provided further that the department of health shall submit a detailed report on the progress of assessing the impact of military activities on the drinking water located in the Makua Military Reservation within Makua Valley and the criteria established with the military to monitor the drinking water supply located in Makua Valley; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 22. Provided that the developmental disabilities division (HTH 501), shall prepare and submit a detailed progress report on the implementation of the Makin settlement for fiscal biennium 2001-2003; provided further that the report states specifically the progress made by the case managers in working with individuals and families to coordinate individualized planning, admissions, and access to services to meet settlement timelines; provided further that the report shall include, but not be limited to, the following information:

- (1) The actual number of individuals served and types of services provided for fiscal year 2001 and fiscal year 2002 actual and projected;
- (2) The number of individuals who are currently on the waitlist for services for fiscal year 2001 and fiscal year and fiscal year 2002¹ actual and projected; and
- (3) The number of individuals removed from the waitlist for fiscal year 2001 and fiscal year 2002 actual and projected;

and provided further that the report shall be submitted to the legislature no later than twenty days after each quarter of fiscal year 2002 and 2003.

SECTION 23. Provided that of the general fund appropriation for children with special health needs services (HTH 530), the sum of \$2,134,503 for fiscal year 2001-2002 and the sum of \$2,134,503 for fiscal year 2002-2003 may be expended for operating expenses and positions, fee-for-service, and purchase of service contracts; provided further that the early intervention services administration shall prepare and submit a detailed progress report, including all expenditures, on the services provided and actual number of children served for the early intervention administration; provided further that the report include a report on the projected number of children versus the actual number of children served by month for the entire fiscal year; provided further that the report include projected expenditures versus the actual expenditures by month for the entire fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 24. Provided that of the general fund appropriation for children with special health needs services (HTH 530), the sum of \$68,572 and two permanent positions (data processing systems analyst and data processing user support technician) for fiscal year 2001-2002 and the sum of \$68,572 and two permanent positions (data processing systems analyst and data processing user support technician) for fiscal year 2002-2003 shall be expended to increase user support to support data processing needs for the early intervention services administration; provided further that the children with special health needs services shall submit a detailed status report on the technical progress made in addressing the Felix contempt order; provided further that the progress report include statistical information on encounter data obtained for QUEST reimbursements and the amount of QUEST funds received for fiscal years 2001, 2002 and 2003 as a result of these additional positions; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 25. Provided that of the general fund appropriation for maternal and child health services (HTH 550), the sum of \$10,506,539 for 2001-2002 and the sum of \$14,047,925 for 2002-2003 shall be expended for contract services for home visitation to support the healthy start program; provided further that a detailed progress report on the number of clients served and services provided for contract services; provided further that the report include projected population versus actual population by month for fiscal years 2001, 2002 and 2003; provided further that the report include projected expenditures versus actual expenditures by month for fiscal

years 2001, 2002 and 2003; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 26. Provided that of the general fund appropriation for health resources administration (HTH 595), the sum of \$307,699 for three permanent positions (data processing systems analyst V; data processing systems analyst IV; and data processing user technician), computers, equipment, and consultant services for fiscal year 2001-2002 and the sum of \$297,899 for three permanent positions (data processing systems analyst V; data processing systems analyst IV; and data processing user technician) for fiscal year 2002-2003 shall be expended to begin the process of planning, designing, and developing infrastructure support for the developmental disabilities administration to convert the division to an all-electronic office and expand the information system to support the implementation of the Makin settlement; provided further that the developmental disabilities administration shall prepare a status report on the progress made in upgrading the technology infrastructure of developmental disabilities division to meet the settlement timeliness; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 27. Provided that the health resources administration (HTH 595), shall prepare and submit a detailed status report of the funds expended by the department of health for health promotion and disease prevention programs, including but not limited to, maternal child health and child development program, promotion of healthy lifestyles, and prevention oriented public health programs, from the tobacco settlement fund, including all expenditures, and any allocation of funds for the state children's health insurance program; provided that the report shall be submitted on the expected and actual revenue, national total and Hawaii's share, from the master settlement agreement; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 28. Provided that the Hawaii health systems corporation (HTH 210), shall submit detailed financial statements (balance sheet, statement of revenue and expenses, and sources and uses of cash) by facility and in total, comparing projected revenues to the actual revenues and budgeted expenditures to actual expenditures for fiscal year 2000-2001 and for fiscal year 2001-2002 (four months actual, eight months forecasted) with accompanying explanations for variances to highlight the financial and operational achievements and shortfalls of the Hawaii health systems corporation; and provided further that these reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 29. With the approval of the director of finance, the Hawaii health systems corporation (HTH 210), attached to the department of health may transfer to the department of human services funds appropriated to the Hawaii health systems corporation for the care and treatment of patients whenever the department of human services can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated Hawaii health systems corporation critical access hospitals.

SECTION 30. Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of \$2,535,000 for fiscal year 2001-2002 shall be expended for subsidies for the following:

<u>Facility</u>	<u>FY 2001-2002</u>
Hana health center	\$750,000
Molokai general hospital	\$700,000
Waianae comprehensive health	\$735,000
Kahuku hospital	\$350,000;

and provided further that any funds not expended for these purposes shall be lapsed to the general fund.

SECTION 31. Provided that of the general fund appropriation for adult mental health - outpatient (HTH 420), the sum of \$8,171,573 for fiscal year 2001-2002 and the sum of \$14,471,573 for fiscal year 2002-2003 shall be used to obtain additional community-based services for individuals discharged or diverted from the Hawaii state hospital; provided further that the behavioral health services administration shall be responsible for developing an implementation plan to assist the State in seeking federal money to help pay for developing community housing for the mentally ill for the adult mental health - outpatient (HTH 420); provided further that the behavioral health services administration shall be responsible for submitting a detailed quarterly progress report to the legislature to ensure fiscal accountability on the use of funds for community-based services; specifically, the report to the legislature shall include but not be limited to the following:

- (1) Progress made in developing an appropriate array of community services for patients discharged or diverted from the state hospital; and
- (2) Provide an assessment of the available capacity for services in the community and level of service utilization;

provided further that the behavioral health services administration shall be responsible for preparing and submitting detailed quarterly expenditure reports concerning the purchase of community-based adult mental health services; provided further that the report shall include but not be limited to, the following information:

- (1) The number of discharged and diverted patients entering the system by month;
- (2) The amount of funds expended by type of service; and
- (3) The amount of funds expended by provider;

and provided further that the report shall be submitted to the legislature no later than thirty days after the end of each state of Hawaii fiscal quarter during fiscal year 2001-2002.

SECTION 32. Provided that the alcohol and drug abuse division (HTH 440), shall prepare and submit a detailed report on the purchase of substance abuse services, the number of individuals in the criminal justice population served, by category, and the success and recidivism rate for each population category; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 33. Provided that the child and adolescent mental health division (HTH 460), shall prepare and submit a report on mental health services; provided further that the report shall include, but not be limited to, the following information:

- (1) The number of "high-end" Felix class children and adolescents served;

- (2) The number of "moderate" Felix class children and adolescents served;
- (3) The number of "low-end" Felix class children and adolescents served;
- (4) Average expenditure by Felix class children and adolescents;
- (5) Average hours of services by Felix class children and adolescents;
- (6) Treatment outcome and performance reports on each service provided by Felix class children and adolescents;
- (7) Success rate of Felix class children and adolescents;
- (8)¹ The number of discharged Felix class children and adolescents;
- (10) Caseload report per total available mental health care coordinator (filled or vacant positions) and including those positions acting as mental health care coordinators; and
- (11) Total number of exempt positions and its related civil service position, if any, and a comparison of exempt salary versus civil service salary for each position listed;

and provided further that the report shall be submitted to the legislature twenty days after the end of each quarter during the fiscal biennium 2001-2003.

SECTION 34. Provided that the department of health shall notify the Legislature on a monthly basis of expenditures relative to the Felix Consent Decree made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or any another agent of the United States Judiciary.

SECTION 35. Provided that of the general fund appropriation for child and adolescent mental health (HTH 460) for services to juvenile sex offenders, the sum of \$25,000 for fiscal year 2001-2002 shall be expended to relocate the juvenile sex offender residential treatment facility from Pearl City to the preferred site identified in the January 2001 site selection study by Kimura International; provided further that the relocation of the juvenile sex offender residential treatment facility from its current site shall occur no later than June 30, 2002.

SECTION 36. Provided that of the general fund appropriation for behavioral health services administration (HTH 495), the sum of \$1,779,388 for fiscal year 2001-2002 and the sum of \$1,779,388 for fiscal year 2002-2003 shall be expended for temporary positions to support the efforts of the child and adolescent mental health division to comply with the revised Felix consent decree; provided further that the behavioral health services administration shall prepare and submit to the legislature a detailed quarterly expenditure report on projected and actual expenditures; and provided further that the report shall be submitted to the legislature twenty days after the end of each quarter during fiscal biennium 2001-2003.

HUMAN SERVICES

SECTION 37. Provided that of the general fund appropriation for Child Welfare Services (HMS 301), the amount of \$642,614 for fiscal year 2001-2002 and \$627,342 for fiscal year 2002-2003 shall be expended for Multi-Agency Case Coordinators and Case Support Aides; and provided further that the department of human services shall submit a report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions that shall include, but not be limited to, the following information:

- (1) The availability of federal funding in support of this initiative, including the amount of this funding and how the department of human services could receive this funding; and

- (2) The number of children aided by the services provided by this initiative and the capacity of service provided by this initiative.

SECTION 38. Provided that of the general fund appropriation for child placement board and related client payments (HMS 303), the sum of \$9,941,842 for fiscal year 2001-2002 and \$11,251,324 for fiscal year 2002-2003 shall be expended for room and board payments for foster, relative, preadoption, group home, and bed holding services; and provided further that the department of human services shall submit a report to the legislature on the number of children who receive adoption assistance or difficulty of care payments and the amount of these payments for the previous fiscal year and the current fiscal year (four months actual and eight months forecasted) no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 39. Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$38,276,022 for fiscal year 2001-2002 and the sum of \$46,211,534 for fiscal year 2002-2003 shall be expended for prescription drugs for fee-for-service clients; provided further that the department shall not restrict, by any prior or retroactive approval process, restrictive formulary, therapeutic substitution, or preferred drug list, a physician's ability to treat a mental health consumer with an atypical anti-psychotic medication that has been approved and designated as safe and effective by the Food and Drug Administration, and which the physician in his professional judgement and within the lawful scope of his practice, he considers appropriate for the treatment of a mental health consumer; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of human services shall submit a report that shall include, but not be limited to:

1. all expenditures made by prescription drug,
2. the number of recipients by type of drug prescribed, and
3. possible cost containment measures;

and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular sessions.

SECTION 40. Provided that of the general fund appropriation for home and community-based care services (HMS 603), the sum of \$11,031,319 for fiscal year 2001-2002 and the sum of \$11,031,319 for fiscal year 2002-2003 shall be expended for the nursing home without walls and residential alternative community care programs; provided further that the department of human services shall submit a report on the number of clients receiving services and projected to receive services, the number of individuals requesting services or on any waitlists, and the number of individuals in the State that qualify for these services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular sessions.

SECTION 41. Provided that of the general fund appropriation for child support enforcement services (ATG 500), the sum of \$50,000 for fiscal year 2001-2002; and that of the federal fund appropriation for child support enforcement services (ATG 500), the sum of \$97,059 for fiscal year 2001-2002 shall be expended for a comprehensive study of the automated child support enforcement (KEIKI) system; provided further that this study shall be conducted by the Office of the Auditor; provided further the department of the Attorney General shall transfer the sum of \$147,059 in the first quarter of fiscal year 2001-2002 to the Office of the Auditor to conduct this study; provided further this report shall include, but not be limited to, the following information:

- (1) Status and measures of effectiveness of the implementation of the automated child support enforcement (KEIKI) system,
- (2) Effectiveness of the agency in addressing problems of erroneous determinations, clients inability to reach child support enforcement agency staff by telephone, and other client problems,
- (3) Review child support enforcement systems in other States where Child Support Enforcement has been successful,
- (4) Recommendations on a plans of action with set goals, measures of effectiveness and time lines, to dramatically improve the child support enforcement agency to include possible changes to the organization or position to improve the structure of this agency;

and provided further that the Office of the Auditor shall submit this report to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 42. Provided that the health resources administration (HTH 904), shall prepare and submit an expenditure report for kupuna care and elderly abuse services and the number of individuals served for fiscal year 2001-2002 and fiscal year 2002-2003; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

EDUCATION

SECTION 43. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$107,397,431 for fiscal year 2001-2002 and the sum of \$114,602,055 for fiscal year 2002-2003 shall be used to pay for health fund benefits for department of education employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 44. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$117,646,768 for fiscal year 2001-2002 and the sum of \$134,773,597 for fiscal year 2002-2003 shall be used to pay for debt service on general obligation bonds issued for department of education projects and shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 45. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$44,978,086 and \$62,038,907 for 2001-2002 and 2002-2003 respectively shall be used to pay for pension accumulation contributions for department of education employees; provided further that the sum of \$54,842,386 and \$55,816,091 for 2001-2002 and 2002-2003 respectively shall be used to pay for social security/Medicare contributions for department of education employees; provided further that the amounts shall be transferred to the retirement program (BUF 141), of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 46. Provided that of the general fund appropriation for school based budgeting (EDN 100), \$75,000 for fiscal year 2001-2002 and the sum of

\$75,000 for fiscal year 2002-2003 shall be expended for Frank Delima's School Enrichment Program.

SECTION 47. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$1,043,833 for fiscal year 2001-2002 and the sum of \$1,043,833 for fiscal year 2002-2003 shall be expended for the youth challenge academy program administered by the department of defense; provided further that the department of defense shall submit a report of the revenues and expenditures with justification for each and include department benchmarks to rate the programs performance and efficiency; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular sessions.

SECTION 48. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$45,000 for fiscal year 2001-2002 and the sum of \$45,000 for fiscal year 2002-2003 shall be expended for youth leadership programs for Hilo High, Kalaniana'ole Elementary and Intermediate, Laupahoehoe High, Paauilo Intermediate, Honokaa Elementary and High, Keea Middle, and Waiakea Intermediate and High.

SECTION 49. Provided that of the general fund appropriations for school based budgeting (EDN 100) the following fiscal year 2002-2003 cost items shall be considered non-recurring cost items:

- | | |
|---|------------|
| 1. Equipment for new facilities | \$845,530, |
| 2. Equipment for new portable facilities | \$408,000, |
| 3. Equipment and textbooks for new special education; | \$656,190 |

and provided further that the aforementioned cost items shall be reduced by the appropriate amount at the beginning of fiscal biennium 2003-2005.

SECTION 50. Provided that of the general fund appropriations for school and district administration (EDN 300) the fiscal year 2002-2003 appropriation for criminal history record checks shall be considered a non-recurring cost item; and provided further that the aforementioned cost items shall be reduced by the appropriate amount at the beginning of fiscal biennium 2003-2005.

SECTION 51. Provided that the department of education shall submit a detailed report on the department's progress toward meeting the requirements of the Felix Response Plan to include four months actual expenditures and eight months projected expenditures for the current fiscal year, the number of benchmarks met, a listing of those benchmarks not met and estimated dates of their completion, the expenditures (five months actual and seven months projected) for the 12 Felix Response Plan items broken down by cost element, the progress of school based mental health services implementation, the quantity of children served by complex, the number of schools in compliance and identification of schools not in compliance, a progress report on expenditures and development of the integrated special education database, description of efforts made by the department to meet the requirements of the Felix Response Plan in the most cost efficient manner possible; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 52. Provided that comprehensive school support services (EDN 150), shall submit a detailed report to the legislature in regards to the recruitment and hiring of personnel required by the department of education for mental health

services; and provided further that the report shall be transmitted to the legislature on the first working day of each month.

SECTION 53. Provided that the department of education shall notify the legislature on a monthly basis on all expenditures to date relative to the Felix Consent Decree made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or any another agent of the United States Judiciary.

SECTION 54. Provided that of the general fund appropriation for physical plant and operations (AGS 807) the sum of \$24,348 and the sum of \$24,348 for fiscal year 2002-2003 shall be expended for the salary of position number 03869.

HIGHER EDUCATION

SECTION 55. Provided that of the general fund appropriation for the University of Hawaii, Manoa (UOH 100), the sum of \$75,000 for fiscal year 2001-2002 and the sum of \$75,000 for fiscal year 2002-2003 shall be used to conduct research and analysis of state fiscal policy issues and to study the feasibility of establishing an interdisciplinary program on public policy instruction, research, and service at the University of Hawaii at Manoa.

SECTION 56. Provided that of the general fund appropriation for the university of Hawaii community colleges (UOH 800), the sum of \$144,644 for fiscal year 2002-2003 shall be expended for the establishing and staffing of the Pearl Harbor satellite campus in conjunction with the Pearl Harbor naval shipyard apprenticeship program; and provided further that funding shall not be released until a contract has been executed between the university of Hawaii community colleges and the Pearl Harbor naval shipyard apprenticeship program delineating each party's benefits and responsibilities in establishment of this satellite campus.

SECTION 57. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$39,148,874 for fiscal year 2001-2002 and the sum of \$41,721,567 for fiscal year 2002-2003 shall be used to pay for health fund benefits for university of Hawaii employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 58. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$54,298,508 for fiscal year 2001-2002 and the sum of \$62,203,199 for fiscal year 2002-2003 shall be used to pay for debt service on general obligation bonds issued for university of Hawaii projects and transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 59. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$18,852,954 and \$26,004,144 for fiscal year 2001-2002 and 2002-2003 respectively shall be used to pay for pension accumulation contributions for university of Hawaii employees; provided further that the sum of \$21,995,891 and \$22,386,420 for fiscal year 2001-2002 and 2002-2003 respectively shall be used to pay for social security/Medicare contributions for university of Hawaii employees; provided further that the amounts shall be trans-

ferred to the retirement program (BUF 141), of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 60. Provided that of the general fund appropriation to the university of Hawaii systemwide support (UOH 900), the sum of \$6,000,000 for fiscal year 2001-2002 shall be expended as a lump-sum appropriation as prescribed by law or university policy for non-recurring costs, except that the sum of \$1,009,421 for fiscal year 2001-2002 shall be expended for the establishment of the Mauna Kea management authority and the sum of \$1,000,000 for the department of information and computer sciences; provided further that a report of expenditures (four month actual and eight months projected) shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular sessions.

CULTURE AND RECREATION

SECTION 61. Provided that of the federal fund appropriation for historic preservation (LNR 802), the sum of \$50,000 for fiscal year 2001-2002 and the sum of \$50,000 for fiscal year 2002-2003 shall be expended to establish an assessment and monitoring program of cultural sites and burial remains in the Makua Valley on O'ahu; provided further that the department of land and natural resources shall work with the military to establish the assessment and monitoring program; provided further that the department of land and natural resources shall submit a detailed report on the progress of assessing the cultural sites and burial remains in Makua Valley and the criteria established with the military to monitor these cultural sites and burial remains located in Makua Valley; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 62. Provided that of the special fund appropriation for ocean based recreation (LNR 801), the sum of \$2,000,000 for fiscal year 2001-2002 and the sum of \$3,000,000 for fiscal year 2002-2003 shall be expended on repair and maintenance for small boat harbor facilities; provided further that the appropriation shall not be used for any other purpose; and provided further that a report shall be submitted detailing all backlogs pertaining to repair and maintenance and expenditures made to reduce the backlogs for the period July 1, 2000 to December 15, 2001 to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 63. Provided that of the special fund appropriation for spectator events and shows-aloha stadium (AGS 889), the sum of \$2,500 for fiscal year 2001-2002 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

PUBLIC SAFETY

SECTION 64. Provided that of the general fund appropriation for intake services (PSD 410), corrections programs (PSD 420), and Hawaii paroling authority-supervision and counseling (PSD 612), the sum of \$470,679 for fiscal year 2001-2002 and \$459,993 for fiscal year 2002-2003 shall be expended for substance abuse treatment and job development programs for the pretrial, incarcerated, and parolee populations; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of public safety shall submit a report on all services provided and expenditures for the previous fiscal year, and actual and

planned expenditures for fiscal years 2002 and 2003, to the legislature no later than twenty days prior to the 2002 and 2003 regular sessions.

SECTION 65. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$24,716,470 for fiscal year 2001-2002 and the sum of \$25,262,054 the fiscal year 2002-2003 shall be expended for the renewed mainland prison contracts for transportation and necessary operating costs of housing; provided further that any unexpected funds shall lapse into the general fund; provided further that the department of public safety shall submit a report of all expenditures made for the mainland prisoners for fiscal year 2001-2002 and fiscal year 2002-2003; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular sessions.

SECTION 66. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,457,000 for fiscal year 2001-2002 and the sum of \$3,285,000 for fiscal year 2002-2003 shall be expended for the housing of 100 pre-trial detainees at the Hawaii based Federal Detention Center; provided further that the department of public safety shall provide a report to the legislature concerning its actions surrounding the transportation of additional inmates to mainland facilities to make available more pre-trial detainee space, the total cost including transportation and housing an inmate on the mainland versus renting bed space at the federal detention center, and a detailed breakdown of the criteria used to select which inmates are eligible to be moved to mainland facilities; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 regular session.

SECTION 67. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$597,000 for fiscal year 2001-2002 and the sum of \$597,000 for fiscal year 2002-2003 shall be expended exclusively for relief from major disasters pursuant to chapter 127-11, Hawaii Revised Statutes.

INDIVIDUAL RIGHTS

SECTION 68. Provided that of the trust fund appropriation for the insurance regulatory services (CCA 106), the sum of \$1,000,000 or as much thereof as needed for fiscal year 2001-2002 shall be expended for the purpose of over-payment reimbursements to the payees of the commissioners education trust fund; provided further that any unrequired or unencumbered funds shall be lapsed to the trust fund.

SECTION 69. Provided that of the special fund appropriation for conveyances and recordings (LNR 111), the sum of \$100,000 for fiscal year 2001-2002 and \$100,000 for fiscal year 2002-2003 shall be expended for equipment modernization; provided further that a detailed report to the legislature on the progress towards completion of modernization of the bureau of conveyances shall be submitted including, but not limited to the following:

- (1) A listing of all equipment still in need of replacement;
- (2) Processes that equipment modernization has made more efficient to date;
- (3) Processes modernization will make more efficient in the near future; and,
- (4) Processes that additional equipment modernization will make more efficient;

and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

GOVERNMENT-WIDE SUPPORT

SECTION 70. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$15,000 in fiscal year 2001-2002 shall be used for the governor's "contingent fund" pursuant to section 37-71(f) of the Hawaii Revised Statutes; and provided further that such funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise.

SECTION 71. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$50,000 for fiscal year 2002-2003 shall be expended for the gubernatorial transition; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the director of finance shall submit a report of all expenditures and lapses to the legislature no later than twenty days prior to the convening of the 2003 regular sessions.

SECTION 72. Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100), the sum of \$100,000 for fiscal year 2001-2002 and the sum of \$100,000 for fiscal year 2002-2003 shall be expended for the pre-plus early education program; and provided further that the office of the lieutenant governor shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 73. Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100), the sum of \$100,000 for fiscal year 2001-2002 and the sum of \$100,000 for fiscal year 2002-2003 shall be expended for efforts towards economic development in Hilo; and provided further that the office of the lieutenant governor shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 74. Provided that of the special fund appropriation for economic planning and research (BED 130), the sum of \$1,200,000 for fiscal year 2001-2002 shall be expended to study the carrying capacity of Hawaii for tourism; and provided further that a progress report of this study shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 75. Provided that of the general fund and inter-departmental transfer funds appropriated for program planning, analysis and budgeting (BUF 101), the sums of \$122,009,632 and \$156,323,254, respectively for fiscal year 2002-2003, or so much thereof as shall be necessary, shall be expended for the State employers share of health premiums for active employees and retirees; provided further that the Hawaii public employees health fund shall only contract for and offer health benefit and insurance plans that satisfy the objectives of chapter 87, Hawaii Revised Statutes; and provided further that the total aggregate costs of the plans contracted for and offered to active employees and retirees in fiscal year 2002-2003 shall not exceed the total aggregate amount appropriated for the state employers' share of that fiscal year adjusted for active and retiree enrollment levels; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 76. Provided that the geographic information system equipment and software purchased by office of elections (LTG 102) for the reapportionment commission shall transfer to LNR-natural physical environment (LNR 906), upon cessation of reapportionment commission and precinct mapping activities.

SECTION 77. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$245,093,957 for fiscal year 2001-2002 and \$280,774,348 for fiscal year 2002-2003 shall be expended for interest and principal on general obligation bonds; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 78. Provided that of the interdepartmental transfer appropriation for financial administration (BUF 115), the sum of \$171,945,276 for fiscal year 2001-2002 and \$196,976,796 for fiscal year 2002-2003 shall be expended for interest and principal on general obligation bonds on behalf of the university of Hawaii and department of education; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 79. Provided that of the trust fund appropriation for financial administration (BUF 115), the sum of \$2,511,579 each year of the fiscal biennium 2001-2003 shall be expended to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 80. Provided that of the general fund appropriation for legal services (ATG 100) the sum of \$3,037,477 for fiscal year 2001-2002 and the sum of \$3,037,477 for fiscal year 2002-2003 shall be expended for the purpose of litigation expenses and shall include all costs reasonably related to the prosecution or defense of a court action or suit to which the State of Hawaii is or is anticipated to be named a party; provided further that litigation expenses are defined in general as follows:

- (1) Travel to include the cost of airlines, per diem, ground transportation, parking, toll bridge fees, etc. which are incurred by attorneys, staff members, consultants, experts or witnesses;
 - (2) Depositions;
 - (3) Court reporting services;
 - (4) Transcripts to include medical records as well as transcripts of oral testimony;
 - (5) Experts to include the cost of compensation, transportation, hotels, room and board, air and ground transportation, telephone calls, testing, and preparation of exhibits;
 - (6) Discovery of opponents' experts;
 - (7) Preparation of demonstrative exhibits such as photos, videos, mock-ups, etc.;
 - (8) Investigation;
 - (9) Court fees to include the printing costs for the United States Supreme Court briefs; and
 - (10) Bonds, such as supersedeas bonds;
- provided further that litigation expenses shall not include the following:
- (1) Expenses related to the prosecution or defense of hearings before administrative boards or commissions;

- (2) Expenses related to the acquisition of private lands for public domains in eminent domain proceedings which are payable out of capital improvement project appropriations;
- (3) Expenses related to attorneys' fees, bills of costs or judgment amounts obtained by prevailing opponents;
- (4) Expenses related to the acquisition of equipment or motor vehicles to include such things as computer hardware and associated software;
- (5) Expenses related to collective bargaining or other salary increases for attorneys other than special deputy prosecutors acquired for the pursuit of litigation as allowed under the definition of litigation expenses; and
- (6) Expenses related to the cost of training to also include the cost of travel as defined under the first paragraph in this section;

provided further that any question concerning the specific terms used in this section shall refer to interdepartmental memorandum number 1987-9 from the attorney general; provided further that any unrequired or unencumbered funds shall not be expended and shall be lapsed to the general fund; and provided further that the attorney general shall submit a comprehensive report of all expenditures and litigation settlements for the last completed fiscal year and to include the current fiscal year to the period ending November 30, and including the projected expenditures for the remainder of the current fiscal year and the upcoming fiscal year; provided further that this report shall include, but not be limited to the case history, case status, all expenditures, court dates, settlements, court decisions, and justification on any expenditures for each case which expends more than \$50,000 for each fiscal year; provided further that all reports shall be submitted to the legislature no later than twenty days prior to the convening of each regular session.

SECTION 81. Provided that of the trust fund appropriation for legal services (ATG 100), the attorney general shall submit a comprehensive report concerning all trust funds within the department of the attorney general whether created by statute or otherwise including, but not limited, to the following:

- (1) The source and amount of all revenue for each trust fund;
- (2) Detailed accounts of all expenditures from each trust fund;
- (3) The purpose of all expenditures from each trust fund;
- (4) The source of revenue for each expenditure from each trust fund; and
- (5) Justification for each expenditure from each trust fund;

provided further that:

- (1) Each trust fund shall be treated separately in the report;
- (2) Litigation Settlements shall be done separately by each sub-account;
- (3) Detailed expenditure reports are listed separately by each settlement sub-account; and
- (4) Detailed justifications are listed separately for all expenditures by each settlement sub-account;

provided further that the report shall be submitted quarterly to the legislature no later than twenty days following the ending of each quarterly allocation period; and provided further that a summation report shall be submitted compiling that preceding fiscal year's transactions under the above established guidelines to the legislature for that preceding completed fiscal year no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 82. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$4,933,726 for fiscal year 2001-2002 and the sum of \$4,933,726 for fiscal year 2002-2003 shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed

report of all expenditures and number of claims for workers' compensation claim payments to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 83. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$2,221,620 for fiscal year 2001-2002 and the sum of \$2,221,620 for fiscal year 2002-2003 shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unencumbered funds shall be lapsed to the general fund; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for unemployment compensation claim payments to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 84. Provided that of the general fund appropriation for retirement system (BUF 141), \$50,152,960 for fiscal year 2001-2002 and \$69,176,683 for fiscal year 2002-2003 shall be expended for the employees' retirement system's pension accumulation; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 85. Provided that of the interdepartmental transfer appropriation for retirement system (BUF 141), \$63,831,040 for fiscal year 2001-2002 and \$88,043,051 for fiscal year 2002-2003 shall be expended for the university of Hawaii and department of education's employees' retirement system's pension accumulation; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 86. Provided that of the general fund appropriation for the department of budget and finance, retirement system (BUF 141), the sum of \$59,392,412 for fiscal year 2001-2002 and \$60,446,899 for fiscal year 2002-2003 shall be expended for the employer's share of the social security/Medicare payment for employees; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 87. Provided that of the interdepartmental transfer appropriation for retirement system (BUF 141), the sum of \$76,838,277 for fiscal year 2001-2002 and the sum of \$78,202,511 for fiscal year, 2002-2003 shall be expended for the university of Hawaii and department of education's employer's share of the social security/Medicare payment; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 88. Provided that for risk management (AGS 203), in the event of catastrophic disasters or loss, with the approval of the Governor, resources from the risk management revolving fund shall be expended for the purpose of repairing or replacing damaged or destroyed state facilities in excess of the appropriated revolving fund ceiling; and provided further that a report of the use of this authority shall be transmitted to the Senate President and House Speaker within thirty days of the use of funds.

SECTION 89. Provided that of the general fund appropriation for ground maintenance (AGS 232) the sum of \$20,148 for fiscal year 2001-2002 and the sum of \$20,148 for fiscal year 2002-2003 shall be expended for salary for position number 02396, provided further that the sum of \$21,372 for fiscal year 2001-2002 and the sum of \$21,372 for fiscal year 2002-2003 shall be expended for the salary of position number 02407; and provided further that the sum of \$30,000 in fiscal year 2001-2002 and the sum of \$30,000 in fiscal year 2002-2003 shall be expended for other current expenses.

SECTION 90. Provided that of the general fund appropriation to building repairs and alterations (AGS 233) the sum of \$59,004 for fiscal year 2001-2002 and the sum of \$59,004 for fiscal year 2002-2003 shall be expended for the salary for position number 02329; provided further that the sum of \$27,948 for fiscal year 2001-2002 and the sum of \$27,948 for fiscal year 2002-2003 shall be expended for the salary of position number 26465; provided further that the sum of \$28,560 for fiscal year 2001-2002 and the sum of \$28,560 for fiscal year 2002-2003 shall be expended for the salary of position number 05940; and provided further that the sum of \$49,000 in fiscal year 2002 and fiscal year 2003 shall be expended for other current expenses.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 91. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
A. ECONOMIC DEVELOPMENT							
AGR122 - PLANT PEST AND DISEASE CONTROL							
1.	19202	NEW PLANT QUARANTINE BUILDING, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT A NEW BUILDING FOR THE PLANT QUARANTINE PROGRAM ON OAHU.					
		PLANS				100	
		DESIGN				409	
		CONSTRUCTION				6,475	
		EQUIPMENT				70	
		TOTAL FUNDING	AGS			7,054C	C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
AGR141 - AGRICULTURAL RESOURCE MANAGEMENT							
2.	200105	PLANTATION IRRIGATION/DRAINAGE SYSTEM IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLANTATION IRRIGATION/ DRAINAGE IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		430			
		DESIGN		600			
		CONSTRUCTION		1,570			
		EQUIPMENT		400			
		TOTAL FUNDING	AGR	3,000C			C
3.		MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI					
		PLANS FOR THE IDENTIFICATION OF NEW SOURCES FOR THE MOLOKAI IRRIGATION SYSTEM, IMPROVEMENTS TO ADDRESS LONG-TERM NEEDS, AND EXPANSION.					
		PLANS		200			
		TOTAL FUNDING	AGR	200C			C
4.		LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING DRAINAGE AND INFRASTRUCTURE WITHIN THE WAIPIO VALLEY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			
		LAND		1			
		DESIGN		1			
		CONSTRUCTION		1,797			
		TOTAL FUNDING	AGR	1,800C			C
AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE							
5.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS STATEWIDE.					
		DESIGN		172			53
		CONSTRUCTION		789			1,088
		TOTAL FUNDING	AGS	961C			1,141C
LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE							
6.	C0201A	ANUENUE FISHERIES RESEARCH CENTER - REPLACE FIBERGLASS ROOF, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION TO REPLACE 20+ YEAR-OLD FIBERGLASS ROOF MADE SPECIFICALLY TO CONTROL HEAT WITH LOW ENERGY COSTS. EXISTING ROOF IS BADLY DETERIORATED BY UV, SALT AIR EXPOSURE AT SAND ISLAND, THREATENS WORKERS' SAFETY, FAILS TO CONTROL HEAT, LETS IN DIRT. AFRC REARS FISH (EG. MULLET, MOI) FOR SPORT-FISHERIES, DOES CULTURE RESEARCH.					
		CONSTRUCTION			258		
		TOTAL FUNDING	LNR		258C		C

BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION

7. TE0003 MANOA INNOVATION CENTER CABLING AND WIRING REPLACEMENT, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPLACEMENT AND UPGRADE OF CABLING AND RELATED TECHNICAL EQUIPMENT OR SOFTWARE TO MEET CURRENT NEEDS OF TECHNOLOGY INCUBATOR TENANTS AT THE MANOA INNOVATION CENTER.

PLANS	5		
DESIGN	20		
CONSTRUCTION	1		
EQUIPMENT	88		
TOTAL FUNDING	BED	114C	C

8. TE0005 MAUI RESEARCH AND TECHNOLOGY CENTER BUILDING C, MAUI

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR BUILDING(S) ON THE SITE OF THE MAUI RESEARCH AND TECHNOLOGY CENTER, KIHAI, MAUI, HAWAII. BUILDING(S) TO BE USED BY TECHNOLOGY COMPANIES AND FOR TECHNOLOGY PURPOSES.

PLANS	5		
DESIGN	700		
CONSTRUCTION	7,500		
EQUIPMENT	200		
TOTAL FUNDING	BED	8,405E	E

BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

9. NELH10 NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII

CONSTRUCTION AND EQUIPMENT FOR NOMINAL 55" DIAMETER DEEP AND SURFACE SEAWATER PIPELINES AND ONSHORE DISTRIBUTION SYSTEM TO PROVIDE SEAWATER TO TENANTS LOCATED IN THE HOST PARK AREA OF NELHA.

CONSTRUCTION	1,004		306
EQUIPMENT	165		40
TOTAL FUNDING	BED	1,169C	346C

10. NELH21 NELHA GATEWAY PROJECT, HAWAII

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PREMIER RESEARCH AND EDUCATION CENTER THAT WILL BE SITUATED ON SIX ACRES AT ENTRY ADJACENT TO QUEEN KAAHUMANU HIGHWAY & SERVE AS THE GATEWAY TO NELHA FACILITIES. CONSTRUCTION WILL INCLUDE A BUILDING OF NOT LESS THAN 5000 SQUARE FEET TO SUPPORT BOTH ONGOING & PROPOSED WORK IN SEVERAL AREAS WITH A FOCUS ON ENERGY & CLIMATE RELATED CHALLENGES & INNOVATIONS.					
		DESIGN		500			
		CONSTRUCTION		1,000			
		EQUIPMENT		500			
		TOTAL FUNDING	BED	2,000N			N
LNR141 - WATER AND LAND DEVELOPMENT							
11.	G09	KAPAA HOMESTEADS WELL NO. 3 DEVELOPMENT, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF PUMP, CONTROLS, CONTROL BUILDING, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		50			
		LAND		1			
		DESIGN		200			
		CONSTRUCTION				2,000	
		TOTAL FUNDING	LNR	251C		2,000C	
12.	G17	LIHUE/HANAMAULU EXPLORATORY WELL, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF AN EXPLORATORY WELL INCLUDING WELL DRILLING, CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS		45			
		DESIGN		90			
		CONSTRUCTION				800	
		TOTAL FUNDING	LNR	135C		800C	
13.	G23	CENTRAL MAUI EXPLORATORY WELLS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF EXPLORATORY WELLS INCLUDING WELL DRILLING, CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS		45			
		DESIGN		90			
		CONSTRUCTION				1,600	
		TOTAL FUNDING	LNR	135C		1,600C	
14.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR INCREMENTAL IMPROVEMENTS, INCLUDING INJECTION WELLS, BACKWASH FILTER STRUCTURE AND FILTER CELLS, CHLORINE MIXING AND CONTACT CHAMBER, DISSOLVED AIR FLOTATION THICKENER, CLARIFIERS, PUMP STATION, FLOOD PROOFING, EQUALIZATION BASIN SYSTEM UPGRADES, AND OTHER RELATED WORK.					
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		C		400C
15.	J38	MASTER PLAN FOR WAIMANO FACILITY, OAHU					
		PLANS FOR A MASTER PLAN TO DETERMINE ALTERNATIVE USES FOR THE WAIMANO FACILITY INCLUDING DEVELOPMENT, FINANCIAL AND/OR MARKET PLANS.					
		PLANS			250		
		TOTAL FUNDING	LNR		250C		C
BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY							
16.	HCD001	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PLANNING, DEVELOPMENT AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.					
		PLANS			1,247		1,247
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	BED		1,250C		1,250C
17.	KA008	KAKAAKO MAKAI IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO IMPROVE INFRASTRUCTURE AND PREPARE SITES FOR FUTURE DEVELOPMENT IN KAKAAKO MAKAI. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY AND UTILITY SYSTEMS.					
		PLANS			1		
		LAND			1		
		DESIGN			1,500		
		CONSTRUCTION			8,498		
		TOTAL FUNDING	BED		10,000C		C

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

1. A10A HIA, TERMINAL ROADWAY IMPROVEMENTS, OAHU

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR PEDESTRIAN RAILING, TRAFFIC SIGNAL, IMPROVED LIGHTING AND OTHER MISCELLANEOUS IMPROVEMENTS AT THE GROUND AND SECOND LEVEL ROADWAYS.					
		CONSTRUCTION			100		1,800
		TOTAL FUNDING	TRN		100B		1,800B
2.	A11D	HIA, ELLIOTT STREET CARGO SITE PREPARATION AND APRON, OAHU					
		CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A CARGO FACILITY AT THE NORTH RAMP.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,000B		B
3.	A23J	HIA, WASHWATER CONTAINMENT, OAHU					
		CONSTRUCTION TO EXPAND THE VEHICLE AND AIRCRAFT WASHWATER CONTAINMENT FACILITY AT THE AIRPORT. THIS PROJECT IS NEEDED TO COMPLY WITH THE NPDES PERMIT PROCESS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,500		
		TOTAL FUNDING	TRN		1,250B		B
			TRN		1,250N		N
4.	A41C	HIA, OVERSEAS TERMINAL CONCESSION IMPROVEMENTS, OAHU					
		CONSTRUCTION TO EXPAND AND RENOVATE THE EXISTING CONCESSION SPACE AND IMPROVEMENTS TO PUBLIC AREAS IN THE CENTRAL TERMINAL AREA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			7,500		
		TOTAL FUNDING	TRN		7,000B		B
			TRN		500N		N
5.	A41L	HIA, TICKET LOBBY CANOPIES, PHASE II, OAHU					
		CONSTRUCTION FOR ADDITIONAL COVERED AREAS FOR THE OVERSEAS TERMINAL TICKET LOBBY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			4,600		
		TOTAL FUNDING	TRN		2,300B		B
			TRN		2,300N		N
6.	A41M	HIA, TERMINAL FACILITY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE THE TERMINAL AREA TO INCORPORATE THE CURRENT THEME OF THE AIRPORT TO CREATE A POSITIVE IMAGE TO PASSENGERS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			250		
		CONSTRUCTION					750
		TOTAL FUNDING	TRN		250B		750B
7.	A43F	HIA, ELLIOTT STREET MAINTENANCE FACILITY SITE PREP AND APRON, OAHU					
		DESIGN AND CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A MAINTENANCE FACILITY AT THE NORTH RAMP.					
		DESIGN			800		
		CONSTRUCTION			250		8,900
		TOTAL FUNDING	TRN		1,050B		8,900B
TRN104 - GENERAL AVIATION							
8.	A71A	KALAELOA AIRPORT IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR AIRPORT IMPROVEMENTS INCLUDING STRIPING, AIRFIELD LIGHTING, AND NAVIGATIONAL AIDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			4,330		
		TOTAL FUNDING	TRN		1,500B		B
			TRN		2,830N		N
TRN111 - HILO INTERNATIONAL AIRPORT							
9.	B10A	HILO INT'L AIRPORT, HELICOPTER LEASE LOTS AND FACILITIES, HAWAII					
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, ACCESS, AND UTILITIES) FOR NEW HELICOPTER LEASE LOTS AND SUPPORTING FACILITIES. PROJECT INCLUDES CONSTRUCTION OF A NEW APRON AND PARKING POSITIONS FOR HELICOPTERS, TO BE RELOCATED TO MINIMIZE OPERATIONAL CONFLICTS WITH THE NEW CARGO FACILITY.					
		DESIGN			150		
		CONSTRUCTION			150		1,350
		TOTAL FUNDING	TRN		300B		1,350B
10.	B10B	HILO INT'L AIRPORT, HOLD CARGO BUILDING, HAWAII					
		CONSTRUCTION FOR ADDITIONAL CARGO FACILITIES WITHIN THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			17,540		
		TOTAL FUNDING	TRN		15,540B		B
			TRN		2,000N		N
11.	B10N	HILO INT'L AIRPORT, NOISE ATTENUATION, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR	M O	FISCAL YEAR	M O
				2001-02	F	2002-03	F
PLANS AND DESIGN FOR NOISE ATTENUATION OF PROPERTIES WITHIN THE 65-75 DNL CONTOUR RANGE.							
		PLANS					250
		DESIGN					250
		TOTAL FUNDING	TRN		B		500B

TRN114 - KONA INTERNATIONAL AIRPORT AT KE'AHOLE

12. C03B KONA INT'L AIRPORT AT KEAHOLE, PARKING LOT EXPANSION, HAWAII

DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING SPACES AT THE EXISTING EMPLOYEE PARKING LOT TO RELIEVE OVERFLOW CONDITIONS.

DESIGN			180		
CONSTRUCTION			165		1,200
TOTAL FUNDING	TRN		345B		1,200B

13. C03L KONA INT'L AIRPORT AT KEAHOLE, GENERAL AVIATION FUEL SITE PREPARATION, HAWAII

CONSTRUCTION FOR SITE IMPROVEMENTS NEEDED TO PROVIDE A FUEL STORAGE SYSTEM FOR GENERAL AVIATION AT THE AIRPORT.

CONSTRUCTION			952		
TOTAL FUNDING	TRN		952B		B

14. C03P KONA INT'L AIRPORT AT KEAHOLE, RAMP K, PHASE II, HAWAII

CONSTRUCTION FOR PAVING THE AREA IN THE VICINITY OF THE EXISTING HELIPORT AND GENERAL AVIATION AREA FOR IMPROVED ACCESS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			1,695		
TOTAL FUNDING	TRN		865B		B
	TRN		830N		N

15. C03Q KONA INT'L AIRPORT AT KEAHOLE, INTERIM FIS IMPROVEMENTS, HAWAII

CONSTRUCTION FOR IMPROVEMENTS TO INTERIM FIS FACILITY INCLUDING INSTALLATION OF A SPRINKLER SYSTEM, CANOPY AT THE ENTRANCE OF THE FACILITY, LANDSCAPING AND DRAINAGE IMPROVEMENTS.

CONSTRUCTION			502		
TOTAL FUNDING	TRN		502B		B

TRN116 - WAIMEA-KOHALA AIRPORT

16. C55A WAIMEA-KOHALA AIRPORT WATER SYSTEM REPLACEMENT AND FIRE PROTECTION, HAWAII

DESIGN FOR IMPROVEMENTS TO TERMINAL WATER SYSTEM AND INSTALLATION OF NEW SPRINKLER SYSTEM.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			200		
		TOTAL FUNDING	TRN		200B		B
TRN131 - KAHULUI AIRPORT							
17.	D04C	KAHULUI AIRPORT, SECURITY SYSTEM IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION OF BIOMETRIC SECURITY SYSTEM.					
		DESIGN			600		
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN		600B	1,000B	
18.	D08H	KAHULUI AIRPORT, HELICOPTER APRONS AND PARKING EXPANSION, MAUI					
		DESIGN AND CONSTRUCTION FOR HELICOPTER APRONS AND PARKING LOT EXPANSION.					
		DESIGN			300		
		CONSTRUCTION			200	1,500	
		TOTAL FUNDING	TRN		500B	1,500B	
19.	D08I	KAHULUI AIRPORT, PERIMETER ROAD IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION OF PERIMETER ROAD IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			250		
		CONSTRUCTION			200	1,000	
		TOTAL FUNDING	TRN		450B	500B	
			TRN		N	500N	
20.	D08J	KAHULUI AIRPORT, T-HANGARS, MAUI					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL T-HANGARS.					
		DESIGN			150		
		CONSTRUCTION			150	500	
		TOTAL FUNDING	TRN		300B	500B	
TRN151 - LANAI AIRPORT							
21.	D70B	LANAI AIRPORT WATER TANK, LANAI					
		DESIGN AND CONSTRUCTION FOR A NEW WATER TANK AND APPURTENANCES NEEDED FOR FIRE PROTECTION.					
		DESIGN			100		
		CONSTRUCTION			50	500	
		TOTAL FUNDING	TRN		150B	500B	
22.	D70C	LANAI AIRPORT RUNWAY EXTENSION, LANAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A RUNWAY AND TAXIWAY EXTENSION AT LANAI AIRPORT. THIS PROJECT REQUIRES PRIVATE CONTRIBUTIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		4,100			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	3,600N			N
			TRN	1,000R			R
TRN161 - LIHUE AIRPORT							
23.	E03H	LIHUE AIRPORT MAINTENANCE BASEYARD IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A THREE BAY FACILITY AND IMPROVEMENTS TO THE EXISTING MAINTENANCE SHOP BUILDING AT THE MAINTENANCE BASEYARD.					
		CONSTRUCTION		1,500			
		TOTAL FUNDING	TRN	1,500B			B
24.	E03I	LIHUE AIRPORT PARKING IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL EMPLOYEE PARKING FACILITIES TO RELIEVE OVERFLOW CONDITIONS.					
		DESIGN		100			
		CONSTRUCTION		100		800	
		TOTAL FUNDING	TRN	200B		800B	
25.	E03J	LIHUE AIRPORT BAGGAGE CLAIM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO BAGGAGE FACILITIES TO ACCOMMODATE LARGER BAGGAGE CAPACITY OF WIDE-BODY AIRCRAFT.					
		DESIGN		250			
		CONSTRUCTION		200			
		TOTAL FUNDING	TRN	450B			B
26.	E03K	LIHUE AIRPORT GENERAL AVIATION APRON, KAUAI					
		CONSTRUCTION FOR GENERAL AVIATION APRON AT THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		13,800			
		TOTAL FUNDING	TRN	7,300B			B
			TRN	6,500N			N

TRN163 - PORT ALLEN AIRPORT

27. E51A PORT ALLEN AIRPORT LEASE LOT DEVELOPMENT, KAUAI

DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, ACCESS, AND UTILITIES) FOR LEASE LOTS AND SUPPORTING FACILITIES.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			150		
		CONSTRUCTION			100	1,000	
		TOTAL FUNDING	TRN		250B	1,000B	
TRN195 - AIRPORTS ADMINISTRATION							
28.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, PROJECT DEFINITION REPORTS, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,500	1,500	
		TOTAL FUNDING	TRN		1,400B	1,400B	
			TRN		100N	100N	
29.	F04N	AIRPORT ENVIRONMENTAL IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL IMPROVEMENTS AT THE STATEWIDE AIRPORT SYSTEM INCLUDING CESSPOOL AND INJECTION WELL CLOSURE, LABORATORY TESTS, AND ENVIRONMENTAL SITE ASSESSMENTS TO MEET ENVIRONMENTAL REGULATIONS.					
		PLANS			400	400	
		DESIGN			100	100	
		CONSTRUCTION			100	100	
		TOTAL FUNDING	TRN		600B	600B	
30.	F04O	KAHULUI AIRPORT ROADWAY STUDY, MAUI					
		PLANS FOR IMPROVEMENTS TO KAHULUI AIRPORT ROADWAY SYSTEM FOR VEHICULAR ACCESS AND TRAFFIC FLOW.					
		PLANS			200		
		TOTAL FUNDING	TRN		200B		B
31.	F06G	LAND ACQUISITION, STATEWIDE					
		LAND ACQUISITION FOR AVIGATION EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE.					
		LAND			100	100	
		TOTAL FUNDING	TRN		100B	100B	
32.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS		150		150	
		DESIGN		750		750	
		CONSTRUCTION		900		900	
		TOTAL FUNDING	TRN	1,800B		1,800B	
33.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.					
		DESIGN		300		300	
		CONSTRUCTION		2,700		2,700	
		TOTAL FUNDING	TRN	3,000B		3,000B	
34.	F08P	STORMWATER PERMIT COMPLIANCE, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR FACILITIES NEEDED FOR STORMWATER PERMIT COMPLIANCE AT AIRPORTS STATEWIDE.					
		PLANS		600			
		DESIGN		500			
		CONSTRUCTION		1,250		4,000	
		TOTAL FUNDING	TRN	2,350B		4,000B	
35.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE					
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS STATEWIDE.					
		DESIGN		250		250	
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	500B		500B	
36.	F08R	FACILITY SITE PREPARATION, STATEWIDE					
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS AT STATEWIDE AIRPORTS REQUIRING FACILITY SITE PREPARATION TO PROVIDE THE ABILITY TO DEVELOP USABLE SPACE AS NEEDED BASED ON TENANT COMMITMENTS.					
		DESIGN		500			
		CONSTRUCTION				500	
		TOTAL FUNDING	TRN	500B		500B	

TRN301 - HONOLULU HARBOR

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
37.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		16,500			
		TOTAL FUNDING	TRN	16,500E			E
38.	J07	PIER 51B CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, DRAINAGE, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN		650			
		CONSTRUCTION		15,000			
		TOTAL FUNDING	TRN	650B			B
			TRN	15,000E			E
39.	J09	NAVIGATIONAL IMPROVEMENTS, HONOLULU HARBOR AND KEEHI LAGOON, OAHU					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS OF THE NAVIGATIONAL AREAS AT HONOLULU HARBOR AND KEEHI LAGOON. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		450			
		TOTAL FUNDING	TRN	450B			B
40.	J22	CRUISE TERMINAL STRUCTURE AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION OF A NEW CRUISE TERMINAL STRUCTURE AT PIER 2, HONOLULU HARBOR, OAHU.					
		CONSTRUCTION		12,600			
		TOTAL FUNDING	TRN	12,600E			E
41.	J24	CRUISE TERMINAL FACILITIES AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION OF APPURTENANT FACILITIES TO THE NEW CRUISE TERMINAL FACILITY STRUCTURE, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION		7,400			
		TOTAL FUNDING	TRN	7,400E			E
42.	J25	IMPROVEMENTS TO COMMERCIAL FISHING FACILITIES AT PIERS 16-18, HNL HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF A NEW COMFORT STATION, AND OTHER IMPROVEMENTS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			75		
		CONSTRUCTION					400
		TOTAL FUNDING	TRN		75B		400B
43.	J33	KAPALAMA CONTAINER TERMINAL, HONOLULU HARBOR, OAHU					
		PLANS FOR THE DEVELOPMENT OF A NEW CONTAINER FACILITY, AND OTHER RELATED IMPROVEMENTS.					
		PLANS			1,000		
		TOTAL FUNDING	TRN		1,000B		B
44.	J35	KEEHI INDUSTRIAL PARK IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF DRAINAGE IMPROVEMENTS, AND OTHER IMPROVEMENTS.					
		DESIGN			300		
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN		300B		4,000B
TRN303 - KALAELOA BARBERS POINT HARBOR							
45.	J16	GANTRY CRANE, KALAELOA BARBERS POINT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CARGO CONTAINER GANTRY CRANE, A CRANE RAIL SYSTEM, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			400		
		CONSTRUCTION					4,400
		TOTAL FUNDING	TRN		400B		4,400B
46.		CRUISE SHIP BERTH FACILITIES, OAHU					
		DESIGN FOR PORT CALLS FOR CRUISE SHIP BERTH FACILITIES.					
		DESIGN					500
		TOTAL FUNDING	TRN		B		500B
TRN311 - HILO HARBOR							
47.	L02	BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII					
		DESIGN FOR IMPROVEMENTS TO BARGE TERMINAL PIER, YARD, ROADWAY, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN					2,000
		TOTAL FUNDING	TRN		B		2,000B
48.	L10	HILO HARBOR IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER IMPROVEMENTS.					
		DESIGN			350		
		CONSTRUCTION			3,000		
		TOTAL FUNDING	TRN		3,350B		B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
TRN313 - KAWAIHAE HARBOR							
49.	L09	NAVIGATIONAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			600		
		TOTAL FUNDING	TRN		600B		B
TRN331 - KAHULUI HARBOR							
50.	M01	KAHULUI HARBOR IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION OF NEW COMFORT STATION FACILITY, IMPROVEMENTS TO WATER AND WASTEWATER SYSTEMS, AND OTHER IMPROVEMENTS.					
		DESIGN			200		
		CONSTRUCTION				1,600	
		TOTAL FUNDING	TRN		200B	1,600B	
51.	M09	BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS.					
		DESIGN			250		
		CONSTRUCTION			2,500		
		TOTAL FUNDING	TRN		250B		B
			TRN		2,500E		E
TRN361 - NAWILIWILI HARBOR							
52.	K01	PIER IMPROVEMENTS, NAWILIWILI HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT NAWILIWILI HARBOR, AND OTHER IMPROVEMENTS.					
		DESIGN			400		
		CONSTRUCTION			5,200		
		TOTAL FUNDING	TRN		5,600B		B
53.	K02	PASSENGER SHELTER, NAWILIWILI HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR A PASSENGER SHELTER AT NAWILIWILI HARBOR, AND OTHER IMPROVEMENTS.					
		DESIGN			100		
		CONSTRUCTION			800		
		TOTAL FUNDING	TRN		900B		B
54.	K06	NAWILIWILI HARBOR IMPROVEMENTS, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR OFF-SITE IMPROVEMENTS TO THE WATER SYSTEM SERVICING THE HARBOR, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			95		
		TOTAL FUNDING	TRN		95B		B
55.	K10	REPLACE PIER 3 FENDERING, NAWILIWILI HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF PIER FENDERING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			75		
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		75B		1,000B
TRN395 - HARBORS ADMINISTRATION							
56.	I00	HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS			750		750
		TOTAL FUNDING	TRN		750B		750B
57.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			350		350
		TOTAL FUNDING	TRN		350B		350B
58.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN			75		75
		CONSTRUCTION			250		250
		TOTAL FUNDING	TRN		325B		325B
59.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	TRN		300B		300B
60.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES TO PROVIDE A SAFE WORKING ENVIRONMENT FOR MARITIME BUSINESSES AND PERSONNEL WORKING AT HARBOR FACILITIES.					
		PLANS			300		
		DESIGN			300		
		CONSTRUCTION			300		
		TOTAL FUNDING	TRN		900B		B
61.	I08	REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT HARBOR FACILITIES STATEWIDE.					
		DESIGN			75		
		CONSTRUCTION			500		
		TOTAL FUNDING	TRN		575B		B
62.	I10	REMOVAL OF ARCHITECTURAL BARRIERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF BARRIERS TO PERSONS WITH DISABILITIES AT STATE COMMERCIAL HARBOR FACILITIES.					
		DESIGN			100		
		CONSTRUCTION			100		
		TOTAL FUNDING	TRN		200B		B
63.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES, STATEWIDE.					
		CONSTRUCTION			700		
		TOTAL FUNDING	TRN		700B		B

TRN501 - OAHU HIGHWAYS

64. S258 FARRINGTON HIGHWAY IMPROVEMENTS, NANAKULI TO MAKAHA, OAHU

CONSTRUCTION FOR SAFETY AND OPERATIONAL IMPROVEMENTS TO FARRINGTON HIGHWAY, PHASE I, INCLUDING SIDEWALKS, SIGNALIZED PEDESTRIAN CROSSWALKS OR BRIDGES, AND CONTINUOUS LEFT TURN LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION 5,000

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	TRN		1,000E		E
			TRN		4,000N		N
65.	S275	KALANIANAOLE HIGHWAY IMPROVEMENTS, REALIGN HIGHWAY, MAKAPUU, OAHU					
		CONSTRUCTION FOR REALIGNING KALANIANAOLE HIGHWAY IN THE VICINITY OF OCEANIC INSTITUTE, MAKAPUU. IMPROVEMENTS INCLUDE CONSTRUCTING THE ROADWAY MORE INLAND FROM THE SHORELINE.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,000E		E
66.	S289	KAMEHAMEHA HIGHWAY INTERSECTION IMPROVEMENTS AT KAMANANUI ROAD, OAHU					
		CONSTRUCTION FOR INSTALLING A TRAFFIC SIGNAL SYSTEM, PAVEMENT MARKINGS, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		CONSTRUCTION			200		
		TOTAL FUNDING	TRN		200E		E
67.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KAIPAPAU STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			325		
		TOTAL FUNDING	TRN		65E		E
			TRN		260N		N
68.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KAWELA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			90		
		TOTAL FUNDING	TRN		25E		E
			TRN		65N		N
69.	S298	KAMEHAMEHA HIGHWAY, KOKOLOLIO STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KOKOLOLIO STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			145		
		TOTAL FUNDING	TRN		30E		E
			TRN		115N		N
70.	S299	KAMEHAMEHA HIGHWAY, NORTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		LAND FOR REPLACEMENT OF NORTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			50		
		TOTAL FUNDING	TRN		20E		E
			TRN		30N		N
71.	S300	SAND ISLAND PARKWAY, BASCULE BRIDGE DECK REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACING THE BRIDGE DECK AND SPOT REHABILITATION AND CLEANING OF THE BRIDGE MEMBERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			3,215		
		TOTAL FUNDING	TRN		755E		E
			TRN		2,460N		N
72.	S301	FARRINGTON HIGHWAY, MAKAHA STREAM (SOUTH) BRIDGE NO.3 REPLACEMENT, OAHU					
		DESIGN AND LAND FOR REPLACEMENT OF A TIMBER BRIDGE IN THE VICINITY OF MAKAHA BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			100		
		DESIGN			545		
		TOTAL FUNDING	TRN		140E		E
			TRN		505N		N
73.	S302	FARRINGTON HIGHWAY, MAKAHA STREAM (NORTH) BRIDGE NO.3A REPLACEMENT, OAHU					
		DESIGN AND LAND FOR REPLACEMENT OF A TIMBER BRIDGE IN THE VICINITY OF MAKAHA BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			200		
		DESIGN			630		
		TOTAL FUNDING	TRN		170E		E
			TRN		660N		N
74.	S303	KAMEHAMEHA HIGHWAY, HAIAMOA STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN AND LAND FOR REPLACEMENT OF A DOUBLE CELL (TEN FEET X FIVE FEET) REINFORCED CONCRETE BOX CULVERT IN THE VICINITY OF KAHALUU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			100		
		DESIGN			340		
		TOTAL FUNDING	TRN		95E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN		345N		N
75.	S304	KAMEHAMEHA HWY., IN-BOUND CANE HAUL ROAD STRUCTURE REPLMNT., VIC. OF WAIPAHU, OAHU					
		DESIGN FOR REPLACEMENT OF THE IN-BOUND CANE HAUL ROAD STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					600
		TOTAL FUNDING	TRN		E		120E
			TRN		N		480N
76.	S305	KAMEHAMEHA HWY., OUT-BOUND CANE HAUL RD. STRUCTURE REPLMNT., VIC. OF WAIPAHU, OAHU					
		DESIGN FOR REPLACEMENT OF OUT-BOUND CANE HAUL ROAD STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					630
		TOTAL FUNDING	TRN		E		130E
			TRN		N		500N
77.	S306	KAMEHAMEHA HIGHWAY, SOUTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF SOUTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					1,220
		TOTAL FUNDING	TRN		E		245E
			TRN		N		975N
78.	S307	KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF KALUANUI STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					865
		TOTAL FUNDING	TRN		E		175E
			TRN		N		690N
79.	S308	KAMEHAMEHA HIGHWAY IMPROVEMENTS, WAIPAHU STREET TO KA UKA BOULEVARD, OAHU					
		PLANS FOR TRAFFIC OPERATIONAL AND OTHER IMPROVEMENTS, INCLUDING SIDEWALK, BIKEWAY, HIGHWAY LIGHTING, DRAINAGE, AND OTHER IMPROVEMENTS.					
		PLANS			300		
		TOTAL FUNDING	TRN		300E		E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
80.	S309	KAMEHAMEHA HIGHWAY IMPROVEMENTS, WAIHONA STREET TO CENTER DRIVE, OAHU					
		PLANS FOR TRAFFIC OPERATIONAL AND OTHER IMPROVEMENTS, INCLUDING TRAFFIC SIGNAL UPGRADE, SIDEWALK, BIKEWAY, BRIDGES, DRAINAGE, GUARDRAIL, OVERHEAD SIGNS, AND OTHER IMPROVEMENTS.					
		PLANS				750	
		TOTAL FUNDING	TRN			750E	E
81.	S310	FORT BARRETTE ROAD WIDENING, FARRINGTON HIGHWAY TO BARBERS POINT GATE, OAHU					
		PLANS FOR WIDENING THE EXISTING ROADWAY TO FOUR LANES AND OTHER IMPROVEMENTS, INCLUDING RIGHT AND LEFT TURNING LANES, SIDEWALKS, BIKEWAY, HIGHWAY LIGHTING, DRAINAGE, TRAFFIC SIGNALS, LANDSCAPING AND OTHER IMPROVEMENTS.					
		PLANS				400	
		TOTAL FUNDING	TRN			400E	E
82.	S311	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, OAHU					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON OAHU.					
		PLANS				250	
		TOTAL FUNDING	TRN			250E	E
83.	SP0004	TRAFFIC SIGNALS AT HONOWAI STREET AND KUNIA ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR TRAFFIC SIGNALS AT THE INTERSECTION OF HONOWAI STREET AND KUNIA ROAD.					
		DESIGN				50	
		CONSTRUCTION				200	
		TOTAL FUNDING	TRN			250E	E
84.	SP9705	FARRINGTON HWY, DRAINAGE IMPROVEMENTS, ULEHAWA STREAM TO ULEHAWA BCH PARK, OAHU					
		LAND FOR DRAINAGE IMPROVEMENTS ALONG THE MAUKA AND MAKAI SHOULDERS OF FARRINGTON HIGHWAY FRONTING ULEHAWA BEACH PARK.					
		LAND				60	
		TOTAL FUNDING	TRN			60E	E
85.	SP9707	FARRINGTON HWY., DRAINAGE IMPROVEMENTS, NANAKULI RANCH TO THE GTE BUILDING, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		LAND FOR DRAINAGE IMPROVEMENTS ALONG THE MAUKA AND MAKAI SHOULDERS OF FARRINGTON HIGHWAY FROM NANAKULI RANCH TO THE GTE BUILDING AND CONSTRUCT OCEAN OUTLET ON THE NORTHWEST SIDE OF NANAKULI BEACH PARK.					
		LAND			110		
		TOTAL FUNDING	TRN		110E		E
86.	SP9805	KAMEHAMEHA HIGHWAY-KAHEKILI HIGHWAY INTERSECTION IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR A TRAFFIC CIRCLE AT THE INTERSECTION OF KAMEHAMEHA AND KAHEKILI HIGHWAYS.					
		CONSTRUCTION			2,600		
		TOTAL FUNDING	TRN		2,600E		E
87.	SP9903	LEEWARD COMMUNITY COLLEGE, SECOND ACCESS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A SECOND ACCESS TO THE LEEWARD COMMUNITY COLLEGE.					
		PLANS			500		
		DESIGN			1		
		CONSTRUCTION			4,749		
		TOTAL FUNDING	TRN		5,250E		E
88.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING LEFT TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.					
		DESIGN					200
		CONSTRUCTION			2,000		1,000
		TOTAL FUNDING	TRN		2,000E		1,200E
89.	S312	KALAELOA ROADWAY IMPROVEMENTS, VICINITY OF BARBERS POINT NAVAL AIR STATION, OAHU					
		DESIGN FOR ROADWAY IMPROVEMENTS TO ROOSEVELT ROAD, ENTERPRISE ROAD, WEST PERIMETER ROAD, CORAL SEA ROAD AND FUTURE NORTH-SOUTH ROAD CONNECTOR AND REALIGNMENT OF CORAL SEA ROAD TO INDEPENDENCE ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			2,500		
		TOTAL FUNDING	TRN		500E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	2,000N			N
90.	SP9709	FARRINGTON HIGHWAY MEDIAL STRIP, OAHU					
		CONSTRUCTION FOR A MEDIAL STRIP FOR FARRINGTON HIGHWAY FROM KAMEHAMEHA HIGHWAY TO FORT WEAVER ROAD.					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	TRN	5,000E			E
91.		KAHEKILI HIGHWAY IMPROVEMENTS, HAIKU ROAD TO HUI IWA STREET, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO KAHEKILI HIGHWAY FROM HAIKU ROAD TO HUI IWA STREET.					
		PLANS		100			
		DESIGN		300			
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN	400E		3,000E	
92.	MAUKA	HIGHWAY, MAKAHA TO NANAKULI, OAHU					
		DESIGN AND CONSTRUCTION FOR A MAUKA HIGHWAY AS AN ALTERNATIVE ROUTE TO FARRINGTON HIGHWAY FROM MAKAHA TO NANAKULI.					
		DESIGN		150			
		CONSTRUCTION		850			
		TOTAL FUNDING	TRN	1,000E			E
TRN511 - HAWAII HIGHWAYS							
93.	T077	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND/OR PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		150		150	
		CONSTRUCTION		1,465		1,465	
		TOTAL FUNDING	TRN	325E		325E	
			TRN	1,290N		1,290N	
94.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII					
		PLANS FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE, TO INCLUDE PLANNING AND ENVIRONMENTAL STUDIES.					
		PLANS		1,800			
		TOTAL FUNDING	TRN	1,800E			E
95.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HWYS., HAWAII					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN			150		150
		CONSTRUCTION			950		950
		TOTAL FUNDING	TRN		1,100E		1,100E
96.	T119	HILO AND WAIMEA BASEYARDS WASTEWATER SYSTEMS, HAWAII					
		CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE.					
		CONSTRUCTION			60		
		TOTAL FUNDING	TRN		60E		E
97.	T120	HANDICAPPED ACCESSIBILITY FOR SIDEWALKS ON ROUTES 240 AND 270, HAWAII					
		CONSTRUCTION TO INSTALL WHEELCHAIR RAMPS AND RECONSTRUCT SIDEWALKS IN HONOKAA, HAWI, AND KAPAAU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			3,450		
		TOTAL FUNDING	TRN		690E		E
			TRN		2,760N		N
98.	T123	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT HUINA ROAD, HAWAII					
		CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT VOLCANO ROAD AND HUINA ROAD. PROJECT TO PROVIDE EITHER SIGNALIZATION OR THE CONSTRUCTION OF A FULLY CHANNELIZED INTERSECTION, INCLUDING RELOCATING UTILITIES, INSTALLING SIGNS, PAVEMENT MARKERS, STRIPING, AND HIGHWAY LIGHTING AND EXTENDING A DRAINAGE CULVERT.					
		CONSTRUCTION			700		
		TOTAL FUNDING	TRN		700E		E
99.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII					
		LAND ACQUISITION FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.					
		LAND			200		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	TRN		200E		E
100.	T127	KEAAU-PAHOA RD SHOULDER LANE CONVERSION, KEAAU BYPASS RD. TO SHOWER DR., HAWAII					
		DESIGN FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS ON THE INBOUND SIDE OF THE HIGHWAY.					
		DESIGN			300		
		TOTAL FUNDING	TRN		300E		E
101.	T128	KEAAU-PAHOA ROAD IMPROVEMENTS, KEAAU TO PAHOA, HAWAII					
		PLANS FOR WIDENING THE TWO LANE HIGHWAY TO FOUR LANES OR ALTERNATIVE ALIGNMENTS IN THIS CORRIDOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			2,000		
		TOTAL FUNDING	TRN		400E		E
			TRN		1,600N		N
102.	T129	SADDLE ROAD IMPROVEMENTS, HAWAII					
		DESIGN FOR WIDENING AND/OR REALIGNING THE EXISTING TWO-LANE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			5,625		
		TOTAL FUNDING	TRN		1,125E		E
			TRN		4,500N		N
103.	T130	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, HAWAII					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON HAWAII.					
		PLANS			100		
		TOTAL FUNDING	TRN		100E		E
104.	T131	KUAKINI HIGHWAY WIDENING, HENRY STREET TO KAMEHAMEHA III ROAD, HAWAII					
		PLANS FOR WIDENING KUAKINI HIGHWAY FROM 2 TO 4 LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				2,000	
		TOTAL FUNDING	TRN		E	400E	
			TRN		N	1,600N	
105.	T132	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN FOR LEFT TURN LANES AT KULANI ROAD INTERSECTION.					
		DESIGN				400	
		TOTAL FUNDING	TRN		E	400E	
106.	T11	PUAINAKO STREET EXTENSION, KOMOHANA STREET TO COUNTRY CLUB ROAD, HAWAII					
		CONSTRUCTION FOR A NEW TWO-LANE ROADWAY FROM KOMOHANA STREET TO THE INTERSECTION OF COUNTRY CLUB ROAD AND KAUMANA DRIVE. (SPECIAL FUNDS FROM DUTY FREE).					
		CONSTRUCTION		12,500			
		TOTAL FUNDING	TRN	2,500B			B
			TRN	10,000N			N
TRN531 - MAUI HIGHWAYS							
107.	V60	KIHEI-UPCOUNTRY HIGHWAY, MAUI					
		DESIGN FOR A NEW 2-LANE HIGHWAY FROM KIHEI TO UPCOUNTRY MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		4,000			
		TOTAL FUNDING	TRN	800E			E
			TRN	3,200N			N
108.	V63	KAHULUI AIRPORT ACCESS ROAD, MAUI					
		DESIGN FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE).					
		DESIGN		500			
		TOTAL FUNDING	TRN	500B			B
109.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN				100	
		CONSTRUCTION				900	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	TRN		E		1,000E
110.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI					
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER ROAD STRUCTURES ON HANA HIGHWAY.					
		CONSTRUCTION					1,500
		TOTAL FUNDING	TRN		E		1,500E
111.	V86	HANA HIGHWAY IMPROVEMENTS AT BALDWIN AVENUE, MAUI					
		LAND ACQUISITION AND DESIGN FOR IMPROVEMENTS IN THE VICINITY OF THE HANA HIGHWAY AND BALDWIN AVENUE INTERSECTION, INCLUDING MODIFYING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, REPLACING OF STREET PARKING, SIDEWALK RECONSTRUCTION, AND OTHER IMPROVEMENTS.					
		LAND			100		
		DESIGN			500		
		TOTAL FUNDING	TRN		600E		E
112.	V87	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, MAUI					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON MAUI.					
		PLANS			100		
		TOTAL FUNDING	TRN		100E		E
113.	V88	KAHEKILI HIGHWAY IMPROVEMENTS AT WAIHEE TOWN, MAUI					
		DESIGN TO CONSTRUCT SIDEWALKS AND CURB RAMPS FOR ADA COMPLIANCE.					
		DESIGN					200
		TOTAL FUNDING	TRN		E		200E
114.	V89	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI					
		DESIGN FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.					
		DESIGN					150
		TOTAL FUNDING	TRN		E		150E
115.	V90	HALEAKALA HIGHWAY IMPROVEMENTS IN THE VICINITY OF HANA HIGHWAY, MAUI					
		DESIGN AND CONSTRUCTION FOR HALEAKALA HIGHWAY WIDENING AND INTERSECTION IMPROVEMENTS IN THE VICINITY OF HANA HIGHWAY.					
		DESIGN			50		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION			450		
		TOTAL FUNDING	TRN		500E		E
116.	V91	PILANI HIGHWAY WIDENING, MOKULELE HIGHWAY TO KILOHANA DRIVE, MAUI					
		CONSTRUCTION FOR WIDENING THE EXISTING TWO-LANE ROADWAY TO FOUR LANES FROM MOKULELE HIGHWAY TO KILOHANA DRIVE, INCLUDING CONSTRUCTION OF NEW SHOULDERS, RELOCATING/MODIFYING TRAFFIC SIGNALS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			4,000		
		TOTAL FUNDING	TRN		3,000E		E
			TRN		1,000S		S
117.		PILANI HIGHWAY EXTENSION, MAUI					
		DESIGN FOR THE EXTENSION OF PILANI HIGHWAY FROM WAILEA TO ULUPALAKUA.					
		DESIGN					1,000
		TOTAL FUNDING	TRN		E		1,000E
118.		PILANI HIGHWAY WIDENING, MAUI					
		PLANS AND DESIGN FOR THE WIDENING OF PILANI HIGHWAY FROM WAILEA TO MOKULELE HIGHWAY FROM TWO TO FOUR LANES.					
		PLANS					200
		DESIGN					800
		TOTAL FUNDING	TRN		E		1,000E
119.		HONOAPIILANI HIGHWAY WIDENING, MAUI					
		PLANS AND DESIGN FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO WAILUKU FROM TWO TO FOUR LANES.					
		PLANS			200		
		DESIGN			800		
		TOTAL FUNDING	TRN		1,000E		E
120.		HONOAPIILANI HIGHWAY WIDENING, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM DICKENSON STREET TO PUAMANA PARK.					
		PLANS			300		
		DESIGN			400		
		CONSTRUCTION			2,500		
		TOTAL FUNDING	TRN		3,200E		E

TRN541 - MOLOKAI HIGHWAYS

121. W10 MOLOKAI BASEYARD, MOLOKAI

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR A MAINTENANCE BASEYARD FACILITY ON MOLOKAI. PROJECT TO INCLUDE AN OFFICE BUILDING, STORAGE SHED, MOTOR VEHICLE AND EQUIPMENT SHED, MECHANICS SHOP AND SITE IMPROVEMENTS.					
		CONSTRUCTION		3,500			
		TOTAL FUNDING	TRN	3,500E			E
122.	W11	KAMEHAMEHA V HIGHWAY, KAWELA BRIDGE REPLACEMENT, MOLOKAI					
		DESIGN FOR REPLACEMENT OF KAWELA BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				665	
		TOTAL FUNDING	TRN		E	135E	
			TRN		N	530N	
TRN561 - KAUAI HIGHWAYS							
123.	X06	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		LAND ACQUISITION FOR WIDENING OF KAUMUALII HIGHWAY, PHASE I, LIHUE TO VICINITY OF KIPU, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND				10,000	
		TOTAL FUNDING	TRN		E	2,000E	
			TRN		N	8,000N	
124.	X112	MISC. TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HWYS., KAUAI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN				100	
		CONSTRUCTION				865	
		TOTAL FUNDING	TRN		E	965E	
125.	X118	KUAMOO ROAD, RETAINING WALL IN THE VICINITY OF MP 1.1, KAUAI					
		DESIGN FOR REPLACING AN EXISTING WALL.					
		DESIGN		150			
		TOTAL FUNDING	TRN	150E			E
126.	X119	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON KAUAI.					
		PLANS			100		
		TOTAL FUNDING	TRN		100E		E
127.	X120	KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI					
		DESIGN FOR CONSTRUCTION AND/OR RECONSTRUCTING OF RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.					
		DESIGN					250
		TOTAL FUNDING	TRN		E		250E
128.	X100	KUHIO HIGHWAY RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI					
		DESIGN FOR RETAINING WALLS TO PREVENT SLIPPAGE AND EROSION.					
		DESIGN			500		
		TOTAL FUNDING	TRN		500E		E
TRN595 - HIGHWAYS ADMINISTRATION							
129.	X91	PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			215		
		CONSTRUCTION			2,000		1,000
		TOTAL FUNDING	TRN		615E		200E
			TRN		1,600N		800N
130.	X96	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO, TO PROVIDE THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND			200		
		TOTAL FUNDING	TRN		200E		E
131.	X97	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS AND CULVERTS AT VARIOUS LOCATIONS.					
		CONSTRUCTION		1,500		1,000	
		TOTAL FUNDING	TRN	1,500E		1,000E	
132.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		375		375	
		CONSTRUCTION		2,500		2,500	
		TOTAL FUNDING	TRN	875E		875E	
			TRN	2,000N		2,000N	
133.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT ADA STANDARDS; AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		300			
		CONSTRUCTION		2,000			
		TOTAL FUNDING	TRN	700E			E
			TRN	1,600N			N
134.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR SEISMIC RETROFIT OF VARIOUS EXISTING BRIDGES ON OAHU AND HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		500			
		CONSTRUCTION		9,000		9,000	
		TOTAL FUNDING	TRN	1,900E		1,800E	
			TRN	7,600N		7,200N	
135.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION		18,997		18,997	
		TOTAL FUNDING	TRN	13,000E		13,000E	
			TRN	6,000N		6,000N	
136.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE					
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK.					
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	250E		250E	
137.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		PLANS FOR STUDIES TO DETERMINE ROCKFALL/ SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE.					
		PLANS		700			
		TOTAL FUNDING	TRN	700E			E
138.	S293	ALIIAIMOKU BUILDING, AIR CONDITIONING SYSTEM REPLACEMENT, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF THE AIR CONDITIONING SYSTEM AT THE ALIIAIMOKU BUILDING, INCLUDING AIR HANDLING SYSTEM, FLOOR REINFORCEMENT, AND REMOVING AND/OR RECONSTRUCTING WALLS.					
		CONSTRUCTION		1,600			
		TOTAL FUNDING	TRN	1,600E			E
139.	X228	ALIIAIMOKU BUILDING, IMPROVEMENTS TO THE FIRST FLOOR AND LOBBY AREA, OAHU					
		DESIGN AND CONSTRUCTION FOR RELOCATING EXISTING OFFICES ON THE FIRST FLOOR AND IMPROVEMENTS TO THE LOBBY AREA OF THE ALIIAIMOKU BUILDING.					
		DESIGN		40			
		CONSTRUCTION		220			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
TOTAL FUNDING			TRN	260E		E	

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1.	840201	WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE					
CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTE-WATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		12,563		12,563	
		TOTAL FUNDING	HTH	2,094C		2,094C	
			HTH	10,469N		10,469N	

2.	840202	SAFE DRINKING WATER REVOLVING FUND, STATEWIDE					
CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		9,308		9,308	
		TOTAL FUNDING	HTH	1,551C		1,551C	
			HTH	7,757N		7,757N	

LNR402 - FORESTS AND WILDLIFE RESOURCES

3.	D0201	SOUTH-WEST MAUNA KEA FIRE BREAK, HAWAII					
PLANS, LAND ACQUISITION, AND EQUIPMENT TO CONSTRUCT SIX MILES OF FIRE BREAK TWENTY FEET WIDE BETWEEN AHUMOA AND MAUNA KEA STATE PARK. THE FIRE BREAK IS NEEDED FOR THE PROTECTION OF THE PALILA, A LISTED ENDANGERED SPECIES, NESTING AREA ON THE ISLAND.							
		PLANS				8	
		LAND				12	
		EQUIPMENT				36	
		TOTAL FUNDING	LNR		C	56C	
4.	D0203	WAIANAE KAI FOREST RESERVE FIRE BREAK, OAHU					
PLANS, DESIGN, AND CONSTRUCTION TO ESTABLISH FIRE BREAK AND REMOVE INVASIVE FLAMMABLE GRASSES AND REFOREST WITH NATIVE SPECIES.							
		PLANS		10			
		DESIGN		10			
		CONSTRUCTION		45		60	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	LNR		65C		60C
LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT							
5.	J00	ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.					
		DESIGN			3,000		
		CONSTRUCTION			7,000		
		TOTAL FUNDING	LNR		10,000C		C
6.	J0201	DLNR ENVIRONMENTAL RISK ASSESSMENT, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE PREPARATION OF STATEWIDE RISK ASSESSMENT AND MANAGEMENT PLAN, DESIGN AND CONSTRUCTION OF STANDARDIZED WARNING AND INFORMATIONAL SIGNAGE AND OTHER MITIGATION MEASURES.					
		PLANS			200		
		DESIGN			100		
		CONSTRUCTION					500
		TOTAL FUNDING	LNR		300C		500C
7.	950026	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS			1,560		1,560
		TOTAL FUNDING	LNR		1,560C		1,560C

E. HEALTH

HTH101 - TUBERCULOSIS CONTROL

1.	101201	LANAKILA HEALTH CENTER, TB CONTROL PROGRAM SPACE, NEW X-RAY EQUIPMENT, OAHU					
		EQUIPMENT FOR THE INSTALLATION OF A NEW DIGITAL X-RAY UNIT AND ACCESSORIES TO ALLOW STAFF TO READ AND STORE THE X-RAY INFORMATION.					
		EQUIPMENT			425		
		TOTAL FUNDING	AGS		425C		C

HTH501 - DEVELOPMENTAL DISABILITIES

2.	501202	WAIMANO TRAINING SCHOOL & HOSPITAL, UPGRADE FIRE WATERLINE & HYDRANTS, OAHU					
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CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION TO UPGRADE THE FIRE WATERLINE SYSTEM AND FIRE HYDRANTS ON THE GROUNDS OF THE WAIMANO TRAINING SCHOOL AND HOSPITAL.					
		DESIGN			25		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		275C		C
HTH595 - HEALTH RESOURCES ADMINISTRATION							
3.		HALE MAKUA EXPANSION, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONSTRUCTION OF A NEW WING AS AN ADDITION TO HALE MAKUA, KAHULUI; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			20		
		DESIGN			62		
		CONSTRUCTION			548		182
		EQUIPMENT					88
		TOTAL FUNDING	HTH		630C		270C
4.		ST. FRANCIS RENAL DIALYSIS CENTER, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION FOR A NEW DIALYSIS FACILITY; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			50		
		DESIGN			25		
		CONSTRUCTION			435		
		EQUIPMENT			240		
		TOTAL FUNDING	HTH		750C		C
5.		WAIKIKI HEALTH CENTER, OAHU					
		LAND ACQUISITION FOR A WAIKIKI HEALTH CENTER FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND			2,550		
		TOTAL FUNDING	HTH		2,550C		C
6.		MOLOKAI GENERAL HOSPITAL, RENOVATIONS AND IMPROVEMENTS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO CORRECT VARIOUS CODE AND ADA DEFICIENCIES AT THE MOLOKAI GENERAL HOSPITAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	HTH		500C		C

HTH210 - HAWAII HEALTH SYSTEMS CORPORATION

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
7.		HHSC29 MALUHIA HOSPITAL, BLAST CHILLER/BLAST FREEZER, OAHU					
		CONSTRUCTION AND EQUIPMENT TO INSTALL BLAST CHILLER/BLAST FREEZER INTO THE KITCHEN PRODUCTION AREA.					
		CONSTRUCTION					1
		EQUIPMENT					24
		TOTAL FUNDING	HTH		C		25C
8.		HHSC31 MALUHIA HOSPITAL, WALK-IN REFRIGERATOR, OAHU					
		CONSTRUCTION FOR A NEW WALL, CEILING AND FLOOR PANELS MADE OF ALUMINUM OR STAINLESS STEEL WITH NEW REFRIGERATION UNIT INSIDE BOX.					
		CONSTRUCTION					56
		TOTAL FUNDING	HTH		C		56C
9.		HHSC03 HILO MEDICAL CENTER, FIRE SPRINKLER, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		PLANS			7		
		DESIGN			25		
		CONSTRUCTION			225		
		EQUIPMENT			10		
		TOTAL FUNDING	HTH		267C		C
10.		HHSC04 HILO MEDICAL CENTER, ACUTE HOSPITAL FIRE ALARM SYSTEM, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A FIRE ALARM SYSTEM FOR THE ACUTE HOSPITAL.					
		PLANS			5		
		DESIGN			15		
		CONSTRUCTION			175		
		EQUIPMENT			130		
		TOTAL FUNDING	HTH		325C		C
11.		HHSC08 HILO MEDICAL CENTER, ADA REQUIREMENTS, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF GRAB BARS IN ALL PATIENT BATHROOMS IN THE ACUTE HOSPITAL.					
		CONSTRUCTION			20		
		EQUIPMENT			50		
		TOTAL FUNDING	HTH		70C		C
12.		HHSC13 HILO MEDICAL CENTER, AUTOPSY/MORGUE/BODY PREPARATION AND HOLDING AREA, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE THE AUTOPSY/ MORGUE/BODY PREPARATION AREA AND HOLDING AREA TO MEET REQUIRED GUIDELINES FOR FORMALDEHYDE USE THAT REQUIRE 14 AIR EXCHANGES/HOUR AND TO ENCLOSE MORGUE AREA TO CONTAIN ODOR AND EXHAUST OUTSIDE.					
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			80		
		EQUIPMENT			20		
		TOTAL FUNDING	HTH		115C		C
13.	HHSC23	HILO MEDICAL CENTER, ELECTRICAL UPGRADE FOR ACUTE HOSPITAL, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE THE ELECTRICAL SYSTEM IN THE ACUTE HOSPITAL.					
		PLANS					20
		DESIGN					50
		CONSTRUCTION					500
		EQUIPMENT					130
		TOTAL FUNDING	HTH		C		700C
14.	HHSC32	HILO MEDICAL CENTER, VINYL SHEET FLOORING FOR PHARMACY, OB-LABOR & DELIVERY					
		CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF VINYL SHEET FLOORING FOR PHARMACY AND OB-LABOR AND DELIVERY ON TOP OF EXISTING FLOORING AT THE HILO MEDICAL CENTER, HAWAII.					
		CONSTRUCTION					50
		EQUIPMENT					75
		TOTAL FUNDING	HTH		C		125C
15.	HHSC37	HILO MEDICAL CENTER, SEPARATE UTILITY SERVICE FOR ECD, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF THE UTILITIES - ELECTRICAL, WATER, AND TELEPHONE.					
		PLANS					15
		DESIGN					40
		CONSTRUCTION					190
		EQUIPMENT					220
		TOTAL FUNDING	HTH		C		465C
16.	HHSC07	KOHALA HOSPITAL, FIRE ALARM SYSTEM, HAWAII					
		PLANS AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		PLANS			25		
		CONSTRUCTION			200		
		TOTAL FUNDING	HTH		225C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
17.	HHSC14	KOHALA HOSPITAL, RE-ROOFING OF HOSPITAL, HAWAII					
		DESIGN AND CONSTRUCTION TO REMOVE AND REPLACE THE EXISTING METAL ROOFING, GUTTERS, FLASHING, CURBS, EQUIPMENT SUPPORTS, AND WOOD FASCIA.					
		DESIGN			50		
		CONSTRUCTION			1,050		
		TOTAL FUNDING	HTH		1,100C		C
18.	HHSC20	KOHALA HOSPITAL, UPGRADE OF ELECTRICAL DISTRIBUTION SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL DISTRIBUTION SYSTEM.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	HTH		300C		C
19.	HHSC21	KOHALA HOSPITAL, NURSE CALL SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO INSTALL A NURSE CALL SYSTEM.					
		DESIGN			10		
		CONSTRUCTION			90		
		TOTAL FUNDING	HTH		100C		C
20.	HHSC22	KOHALA HOSPITAL, FIRE SPRINKLER SYSTEM AND UPGRADE STANDPIPE, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION TO INSTALL A FIRE SPRINKLER SYSTEM AND UPGRADE THE HOSPITAL FIRE LINE STANDPIPE.					
		PLANS					10
		DESIGN					55
		CONSTRUCTION					265
		TOTAL FUNDING	HTH		C		330C
21.	HHSC11	HALE HOOLA HAMAKUA, UPGRADE AIR CONDITIONING SYSTEM, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADE OF THE AIR CONDITIONING SYSTEM.					
		PLANS			2		
		DESIGN			10		
		CONSTRUCTION			50		
		EQUIPMENT			80		
		TOTAL FUNDING	HTH		142C		C
22.	HHSC17	KAU HOSPITAL, FIRE ALARM SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO INSTALL A FIRE ALARM SYSTEM.					
		DESIGN			24		
		CONSTRUCTION			118		
		TOTAL FUNDING	HTH		142C		C
23.	HHSC18	KAU HOSPITAL, ELECTRICAL UPGRADE, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE HOSPITAL ELECTRICAL SYSTEM.					
		PLANS			5		
		DESIGN			15		
		CONSTRUCTION			80		
		EQUIPMENT			159		
		TOTAL FUNDING	HTH		259C		C
24.	HHSC19	KAU HOSPITAL, FIRE SPRINKLER, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
25.	HHSC26	KONA COMMUNITY HOSPITAL, MED-SURGE RENOVATION, HAWAII					
		DESIGN FOR THE RENOVATION OF THE MED- SURGE PATIENT ROOMS AND NURSES STATION.					
		DESIGN					100
		TOTAL FUNDING	HTH		C		100C
26.	HHSC15	MAUI MEMORIAL MEDICAL CENTER, NURSE CALL SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A NURSE CALL SYSTEM.					
		DESIGN			98		
		CONSTRUCTION			1,103		
		TOTAL FUNDING	HTH		1,201C		C
27.	HHSC35	MAUI MEMORIAL MEDICAL CENTER, FIRE SPRINKLER SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A FIRE SPRINKLER SYSTEM IN THE LAUNDRY DEPARTMENT.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
28.	HHSC36	MAUI MEMORIAL MEDICAL CENTER, ADA SIGNAGE, MAUI					
		DESIGN AND CONSTRUCTION TO INSTALL ADA SIGNAGE AS REQUIRED FOR A HOSPITAL.					
		DESIGN					76
		CONSTRUCTION					768
		TOTAL FUNDING	HTH		C		844C
29.	HHSC05	LANAI COMMUNITY HOSPITAL, FIRE SPRINKLER SYSTEM, LANAI					
		DESIGN AND CONSTRUCTION FOR A FIRE SPRINKLER SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
30.	HHSC06	LANAI COMMUNITY HOSPITAL, FIRE ALARM SYSTEM, LANAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A NEW ADDRESSABLE FIRE ALARM SYSTEM.					
		DESIGN			24		
		CONSTRUCTION			118		
		TOTAL FUNDING	HTH		142C		C
31.		HHSC16 LANAI COMMUNITY HOSPITAL, ELECTRICAL UPGRADES, LANAI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
32.		HHSC12 KULA HOSPITAL, ELECTRICAL UPGRADES, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM.					
		DESIGN			39		
		CONSTRUCTION				334	
		TOTAL FUNDING	HTH		39C	334C	
33.		HHSC01 KAUAI VETERANS MEMORIAL HOSPITAL, FIRE SPRINKLER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN			39		
		CONSTRUCTION			334		
		TOTAL FUNDING	HTH		373C		C
34.		HHSC02 KAUAI VETERANS MEMORIAL HOSPITAL, FIRE ALARM SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		DESIGN			59		
		CONSTRUCTION			550		
		TOTAL FUNDING	HTH		609C		C
35.		HHSC10 KAUAI VETERANS MEMORIAL HOSPITAL, UPGRADE OF MEDICAL PIPE GASES, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF MEDICAL PIPE GASES.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
36.		HHSC24 KAUAI VETERANS MEMORIAL HOSPITAL, NURSE CALL SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION TO INSTALL A NURSE CALL SYSTEM.					
		DESIGN					11
		CONSTRUCTION					88
		TOTAL FUNDING	HTH		C		99C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
37.	HHSC25	KAUAI VETERANS MEMORIAL HOSPITAL, CORRECT ADA ACCESS DEFICIENCIES, KAUAI					
		DESIGN AND CONSTRUCTION TO CORRECT ACCESS REQUIREMENTS TO COMPLY WITH ADA CODES.					
		DESIGN					47
		CONSTRUCTION					442
		TOTAL FUNDING	HTH		C		489C
38.	HHSC33	KAUAI VETERANS MEMORIAL HOSPITAL, FUEL TANK REPLACEMENT, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL AND REPLACEMENT OF THE FUEL TANK.					
		DESIGN					33
		CONSTRUCTION					226
		TOTAL FUNDING	HTH		C		259C
39.	HHSC09	SAMUEL MAHELONA MEMORIAL HOSPITAL, FIRE ALARM SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		DESIGN				47	
		CONSTRUCTION				442	
		TOTAL FUNDING	HTH			489C	C
40.	HHSC27	SAMUEL MAHELONA MEMORIAL HOSPITAL, FIRE SPRINKLER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN					33
		CONSTRUCTION					226
		TOTAL FUNDING	HTH		C		259C
41.	HHSC28	SAMUEL MAHELONA MEMORIAL HOSPITAL, EMERGENCY GENERATORS, KAUAI					
		DESIGN AND CONSTRUCTION TO INSTALL AN EMERGENCY GENERATOR.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
42.	HHSC30	SAMUEL MAHELONA MEMORIAL HOSPITAL, ADA ACCESS DEFICIENCIES, KAUAI					
		DESIGN AND CONSTRUCTION TO CORRECT ADA DEFICIENCIES.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
43.	HHSC34	SAMUEL MAHELONA MEMORIAL HOSPITAL, DIETARY UPGRADES, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
DESIGN AND CONSTRUCTION FOR THE DIETARY UPGRADES.							
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C

HTH710 - STATE LABORATORY SERVICES

44. 710201 DEPARTMENT OF HEALTH LABORATORY-UPGRADE AND RENOVATE LAB, OAHU

CONSTRUCTION TO UPGRADE AND RENOVATE THE EXISTING LABORATORY.

CONSTRUCTION		872	
TOTAL FUNDING	AGS	872C	C

HTH907 - GENERAL ADMINISTRATION

45. 907202 LANAKILA HEALTH CENTER, REPLACE AIR CONDITIONING EQUIPMENT, OAHU

DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING EQUIPMENT AT THE LANAKILA HEALTH CENTER.

DESIGN		25	
CONSTRUCTION		275	
TOTAL FUNDING	AGS	300C	C

F. SOCIAL SERVICES**HMS503 - YOUTH RESIDENTIAL PROGRAMS**

1. OYS06 HYCF GYM RENOVATION, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE HAWAII YOUTH CORRECTIONAL FACILITY GYMNASIUM.

PLANS		1	
DESIGN		1	
CONSTRUCTION		198	
TOTAL FUNDING	AGS	200C	C

BED220 - RENTAL HOUSING SERVICES

2. HA002 KUHIO PARK TERRACE RESOURCE CENTER, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KUHIO PARK TERRACE RESOURCE CENTER.

DESIGN		312	
CONSTRUCTION		7,000	
EQUIPMENT		35	
TOTAL FUNDING	BED	7,347N	N

3. RH001 KUHIO PARK TERRACE REVITALIZATION, OAHU

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND REPLACEMENT OF KUHIO PARK TERRACE. FUNDS WILL BE APPLIED TOWARD A U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOPE VI GRANT TO MEET THE GRANT'S LEVERAGING REQUIREMENT FOR MATCHING FUNDS.					
		DESIGN				500	
		CONSTRUCTION				9,500	
		TOTAL FUNDING	BED		C	10,000C	
4.	RH002	RENOVATION FOR ADA ACCESSIBILITY REQUIREMENTS, STATE PUBLIC HOUSING (EXT)					
		CONSTRUCTION FOR THE RENOVATION OF EXTERIOR COMMON ELEMENTS TO MEET ADA ACCESSIBILITY REQUIREMENTS FOR STATE PUBLIC HOUSING AND OTHER NON-FEDERAL PROJECTS, STATEWIDE.					
		CONSTRUCTION		2,400			
		TOTAL FUNDING	BED	2,400C			C
5.	RH003	RENOVATION FOR ADA ACCESSIBILITY REQUIREMENTS, STATE PUBLIC HOUSING (INT)					
		DESIGN AND CONSTRUCTION TO RENOVATE INTERIORS OF UNITS TO MEET ADA ACCESSIBILITY REQUIREMENTS FOR STATE PUBLIC HOUSING AND OTHER NON-FEDERAL PROJECTS, STATEWIDE.					
		DESIGN		225			
		CONSTRUCTION				1,125	
		TOTAL FUNDING	BED	225C		1,125C	
6.		STATE PUBLIC HOUSING LEAD BASED PAINT ABATEMENT, STATEWIDE					
		CONSTRUCTION FOR THE ABATEMENT OF LEAD BASED PAINT IN STATE LOW INCOME HOUSING UNITS.					
		CONSTRUCTION		750			
		TOTAL FUNDING	BED	750C			C
BED229 - HCDCH ADMINISTRATION							
7.	HA001	HOUSING IMPROVEMENTS FOR FEDERAL LOW RENT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR HOUSING IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO PHYSICAL, HEALTH, AND SAFETY IMPROVEMENTS AND COMPLIANCE WITH CURRENT CODES AND STANDARDS.					
		DESIGN		1,076		990	
		CONSTRUCTION		14,504		14,590	
		TOTAL FUNDING	BED	15,580N		15,580N	

BED224 - HOMELESS SERVICES

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
8.	HS001	KALAELOA HOMELESS SHELTER, IMPROVEMENTS TO FACILITIES FOR THE HOMELESS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF TWO BARRACKS AT FORMER BARBERS POINT NAVAL AIR STATION THAT ARE SLATED FOR USE AS HOMELESS SHELTERS IN 2001. ONE 70-UNIT BUILDING FOR HOMELESS MENTALLY ILL SINGLES AND ONE 44-UNIT BUILDING FOR HOMELESS FAMILIES. THE CIP REQUEST WILL PROVIDE WATER METERS/SERVICES, EQUIPMENT, TWO VEHICLES, AND SOME STRUCTURAL AND LANDSCAPING IMPROVEMENTS.					
		DESIGN			4		
		CONSTRUCTION			298		
		EQUIPMENT			118		
		TOTAL FUNDING	BED		420C		C

HTH904 - EXECUTIVE OFFICE ON AGING

9.	LANAKILA MULTI-PURPOSE SENIOR CENTER, OAHU						
	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE LANAKILA MULTI-PURPOSE SENIOR CENTER. PROJECT INCLUDES HEALTH AND SAFETY IMPROVEMENTS, ACCESSIBILITY IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.						
		DESIGN			50		
		CONSTRUCTION			450		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		505C		C

HMS904 - GENERAL ADMINISTRATION (DHS)

10.	CATHOLIC CHARITIES OF THE DIOCESE OF HONOLULU, OAHU						
	PLANS AND DESIGN FOR A NEW OFFICE BUILDING FOR CATHOLIC CHARITIES OF THE DIOCESE, HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		PLANS			50		
		DESIGN			200		
		TOTAL FUNDING	HMS		250C		C

G. FORMAL EDUCATION

EDN100 - SCHOOL-BASED BUDGETING

1.	002	LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS & SCHOOL SITES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		150

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION EQUIPMENT		1,700		1,700	
				150		150	
		TOTAL FUNDING	AGS	2,000B		2,000B	
2.	003	LUMP SUM CIP-MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTENCE FROM DAGS IN PROVIDING COST ELEMENTS FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS		245		245	
		LAND		5		5	
		TOTAL FUNDING	AGS	250B		250B	
3.	004	LUMP SUM CIP-RENOVATIONS FOR NOISE AND HEAT ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE, VENTILATION, AND/OR HIGH TEMPERATURE PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200		200	
		CONSTRUCTION		800		800	
		TOTAL FUNDING	AGS	1,000B		1,000B	
4.	005	LUMP SUM CIP-FIRE PROTECTION, CODE VIOLATIONS, AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	AGS	500B		500B	
5.	006	LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO PHYSICALLY CHALLENGED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		400		400	
		CONSTRUCTION		2,600		2,600	
		TOTAL FUNDING	AGS	3,000B		3,000B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
6.	007	LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		300		300	
		EQUIPMENT		100		100	
		TOTAL FUNDING	AGS	500B		500B	
7.	008	LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT.					
		DESIGN		100		100	
		CONSTRUCTION		900		900	
		TOTAL FUNDING	AGS	1,000B		1,000B	
8.	009	LUMP SUM CIP-REQUIREMENTS FOR HEALTH & SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	AGS	500B		500B	
9.	010	LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DOE PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.					
		DESIGN		200		100	
		CONSTRUCTION		1,450		1,050	
		EQUIPMENT		100		100	
		TOTAL FUNDING	AGS	1,750B		1,250B	
10.	011	LUMP SUM CIP-TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN		250		250	
		CONSTRUCTION		1,700		1,700	
		EQUIPMENT		50		50	
		TOTAL FUNDING	AGS	2,000B		2,000B	
11.	014	LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROJECTS. PLANS FOR COSTS RELATED TO PROFESSIONAL SERVICES FOR CONDUCTING GOVERNMENTAL ACCOUNTING AND STANDARD BOARD REVIEWS.					
		PLANS		743		250	
		TOTAL FUNDING	EDN	250B		250B	
			EDN	493C		C	
12.	060	LUMP SUM CIP-STATE/DISTRICT RELOCATING AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		50		50	
		CONSTRUCTION		150		150	
		EQUIPMENT		50		50	
		TOTAL FUNDING	AGS	250B		250B	
13.	101	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/REPAIR; GROUND AND SITE WORK; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200		200	
		CONSTRUCTION		3,600		3,600	
		EQUIPMENT		200		200	
		TOTAL FUNDING	AGS	4,000B		4,000B	
14.	007071	LUMP SUM CIP-PUBLIC ACCOMODATIONS TRANSITION PLANS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR THE PROVISIONS OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250		250
		CONSTRUCTION			500		500
		TOTAL FUNDING	AGS		750B		750B
15.	009002	LUMP SUM CIP-PLAYGROUND EQUIPMENT ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		40
		CONSTRUCTION			260		260
		EQUIPMENT			200		200
		TOTAL FUNDING	AGS		500B		500B
16.		LUMP SUM CIP-PLAYGROUND EQUIPMENT, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET U.S. CONSUMER PRODUCTS SAFETY COMMISSION SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		200
		CONSTRUCTION			1,000		1,000
		EQUIPMENT			300		300
		TOTAL FUNDING	AGS		1,500B		1,500B
17.	014050	LUMP SUM CIP-ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			400		400
		CONSTRUCTION			1,100		1,100
		TOTAL FUNDING	AGS		1,500B		1,500B
18.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES					
		DESIGN		225			
		CONSTRUCTION				3,000	
		EQUIPMENT				200	
		TOTAL FUNDING	AGS	225B		3,200B	
19.		CENTRAL MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A, PHASE I; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		365			
		CONSTRUCTION				5,100	
		EQUIPMENT				125	
		TOTAL FUNDING	AGS	365B		5,225B	
20.	292300	KAPOLEI HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR SECOND AND/OR THIRD INCREMENT PHASE II; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		17,952			
		EQUIPMENT		500			
		TOTAL FUNDING	AGS	18,427B			B
			AGS	25R			R
21.		KONAWAENA MIDDLE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE OLD ELEMENTARY SCHOOL BUILDINGS A AND B INTO MIDDLE SCHOOL CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		10			
		CONSTRUCTION		865			
		EQUIPMENT		25			
		TOTAL FUNDING	AGS	900B			B
22.		LAHAINALUNA HIGH SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF CLASSROOMS FORMERLY USED AS A TEMPORARY LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		100			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	1B			B
			AGS	100R			R
23.		LEILEHUA HIGH SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING (REPLACEMENT); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			320		
		CONSTRUCTION				3,100	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		320B	3,200B	
24.	240100	MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST (1ST) AND/OR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			9,942	6,999	
		EQUIPMENT			500	1	
		TOTAL FUNDING	AGS		10,442B	7,000B	
25.		NANAKULI IV ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION FOR THE INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,275		
		TOTAL FUNDING	AGS		2,275B		B
26.		PEARL HARBOR KAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING 'F' (BOMB SHELTER) INTO CLASSROOMS, STORAGE, OFFICES, TOILETS, PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION				1,800	
		EQUIPMENT				65	
		TOTAL FUNDING	AGS		200B	1,865B	
27.		ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A PHASE I; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			800		
		CONSTRUCTION				3,800	
		EQUIPMENT				200	
		TOTAL FUNDING	AGS		800B	4,000B	
28.		WAIMALU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		CONSTRUCTION			750		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		1,000B		B
29.		WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDINGS C AND H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION				2,000	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		200B	2,100B	
30.		STAPKI PRE-SCHOOL FACILITIES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PRE-SCHOOL FACILITIES ON SCHOOL GROUNDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			2,497	2,497	
		TOTAL FUNDING	AGS		2,500C	2,500C	
31.		BALDWIN HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			300		
		CONSTRUCTION			3,120		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		3,520C		C
32.		DOLE INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE BAND ROOM.					
		DESIGN			83		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		283C		C
33.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE MUSIC BUILDING.					
		DESIGN			36		
		CONSTRUCTION			900		
		TOTAL FUNDING	AGS		936C		C
34.		KAIMILOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM.					
		DESIGN			50		
		CONSTRUCTION			450		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	AGS	500C			C
35.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA.					
		DESIGN		50			
		CONSTRUCTION		250			
		TOTAL FUNDING	AGS	300C			C
36.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING F.					
		DESIGN		45			
		CONSTRUCTION		405			
		TOTAL FUNDING	AGS	450C			C
37.		KANEOHE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200			
		CONSTRUCTION		1,900			
		EQUIPMENT		80			
		TOTAL FUNDING	AGS	2,180C			C
38.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE MUSIC BUILDING. PROJECT INCLUDES ELECTRICAL, LIGHTING, PLUMBING, AND P.A. SYSTEM IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		37			
		CONSTRUCTION		187			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	225C			C
39.		MAUI LANI ELEMENTARY SCHOOL, MAUI					
		PLANS AND DESIGN FOR THE FIRST AND SECOND INCREMENT.					
		PLANS		199			
		DESIGN		1			
		TOTAL FUNDING	AGS	200C			C
40.		MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU					
		PLANS AND DESIGN FOR AN ADDITIONAL TWO STORY, SIX CLASSROOM BUILDING.					
		PLANS		5			
		DESIGN		195			
		TOTAL FUNDING	AGS	200C			C
41.		NUUANU ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS. PROJECT INCLUDES DRAINAGE IMPROVEMENTS, BLACKTOP REPAVEMENT, A TURN AROUND AND RELATED IMPROVEMENTS.					
		DESIGN		26			
		CONSTRUCTION		217			
		TOTAL FUNDING	AGS	243C			C
42.		PAUOA ELEMENTARY SCHOOL, LIBRARY EXPANSION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE PAUOA ELEMENTARY SCHOOL LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		CONSTRUCTION		200			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	325C			C
43.		STEVENSON MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR FIELD AND PARKING LOT IMPROVEMENTS. PROJECT INCLUDES FENCING, AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN		50			
		CONSTRUCTION		350			
		TOTAL FUNDING	AGS	400C			C
AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS							
44.	CSD03	LUMP SUM CIP-SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF PUBLIC SCHOOL FACILITIES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES MAINTAINED BY DAGS AND/OR DOE.					
		DESIGN		6,000		2,000	
		CONSTRUCTION		44,000		8,000	
		TOTAL FUNDING	AGS	50,000C		10,000C	

EDN407 - PUBLIC LIBRARIES

45. 01-H&S HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL &/OR STATE REIMBURSEMENT.					
		PLANS		50			
		DESIGN		500			
		CONSTRUCTION		1,900			
		EQUIPMENT		50			
		TOTAL FUNDING	AGS	2,500C			C
46.		AIEA PUBLIC LIBRARY, OAHU					
		LAND ACQUISITION FOR THE AIEA PUBLIC LIBRARY.					
		LAND		2,500			
		TOTAL FUNDING	AGS	2,500C			C
UOH100 - UNIVERSITY OF HAWAII, MANOA							
47.	M86	UHM, FOOD SERVICE FACILITIES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO FOOD SERVICE FACILITIES AT THE UNIVERSITY OF HAWAII AT MANOA.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		747			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	750B			B
48.	M88	UHM, PARKING STRUCTURES AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF PARKING STRUCTURES AND PARKING IMPROVEMENTS AT THE UNIVERSITY OF HAWAII AT MANOA.					
		DESIGN		209			
		CONSTRUCTION		3,216			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	3,426W			W
49.	M91	UHM, WAAHILA FACULTY HOUSING COMPLEX, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE WAAHILA FACULTY HOUSING COMPLEX.					
		DESIGN		537			
		CONSTRUCTION		4,271			
		EQUIPMENT		600			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	UOH	5,408W			W
50.	074	UHM, SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RELOCATION AND DEVELOPMENT OF THE SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER. PROJECT TO INCLUDE ACQUISITION OF LAND, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED WORK AND EXPENSES.					
		PLANS		1			
		LAND		1			
		DESIGN		12,997		1	
		CONSTRUCTION		1		69,998	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH	13,000C			C
			UOH		E	35,000E	
			UOH		R	35,000R	
51.	296	UHM, BASKETBALL/VOLLEYBALL PAVILION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BASKETBALL/VOLLEYBALL PAVILION.					
		DESIGN		261			
		CONSTRUCTION		3,671			
		EQUIPMENT		450			
		TOTAL FUNDING	UOH	4,382R			R
52.	693	UHM, USDA FRUIT FLY FACILITY IN WAIMANALO, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FRUIT FLY FACILITY IN WAIMANALO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		2,597			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	2,600N			N
53.		UHM, HPER BUILDING ADDITION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR OFFICE AND CONFERENCE SPACE ON THE SECOND FLOOR ROOF OF THE EXISTING HPER BUILDING.					
		DESIGN		100			
		CONSTRUCTION		750			
		EQUIPMENT		50			
		TOTAL FUNDING	UOH	900C			C
54.		UHM, MAKAI ATHLETIC TRAINING ROOM, RENOVATION AND EXPANSION, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAKAI ATHLETIC TRAINING ROOM RENOVATION AND EXPANSION; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			599		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		650C		C
UOH210 - UNIVERSITY OF HAWAII, HILO							
55.	389	UHH, MAUNA KEA EDUCATION CENTER AT THE UNIVERSITY PARK, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAUNA KEA EDUCATION CENTER AT THE UNIVERSITY PARK IN HILO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		CONSTRUCTION			9,080		
		EQUIPMENT			9,900		
		TOTAL FUNDING	UOH		19,980N		N
56.		UHH, SCIENCES AND TECHNOLOGY BUILDING, HAWAII					
		PLANS AND DESIGN FOR THE NEW SCIENCES AND TECHNOLOGY BUILDING AT THE UNIVERSITY OF HAWAII AT HILO.					
		PLANS			100		
		DESIGN			900		
		TOTAL FUNDING	UOH		1,000C		C
57.		UHH, MULTI-PURPOSE COMPLEX AT THE UNIVERSITY OF HAWAII AT HILO					
		DESIGN FOR THE MULTI-PURPOSE COMPLEX AT THE UNIVERSITY OF HAWAII AT HILO.					
		DESIGN			200		
		TOTAL FUNDING	UOH		200C		C

UOH800 - UH - COMMUNITY COLLEGES

58.	A30	HON, HIGH TECHNOLOGY PROGRAMS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING BUILDINGS TO ACCOMMODATE HIGH TECHNOLOGY PROGRAMS AT HONOLULU COMMUNITY COLLEGE.					
		DESIGN			433		
		CONSTRUCTION			2,860		
		EQUIPMENT			396		
		TOTAL FUNDING	UOH		3,689C		C
59.	A29	HON, PACIFIC AEROSPACE TRAINING CENTER, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF KALAELOA HANGAR 111 AND DORMITORY FOR THE COMMERCIAL AVIATION PROGRAM.					
		DESIGN		446			
		CONSTRUCTION				1,691	
		EQUIPMENT				234	
		TOTAL FUNDING	UOH	446C		1,925C	
60.	L27	LEE, FOOD SERVICES PROGRAM, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS FOR THE CULINARY ARTS PROGRAM.					
		DESIGN		366			
		CONSTRUCTION				2,669	
		EQUIPMENT				370	
		TOTAL FUNDING	UOH	366C		3,039C	
61.		MAU, FOOD SERVICES PROGRAM, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE FOOD SERVICES BUILDING AT MAUI COMMUNITY COLLEGE.					
		CONSTRUCTION		1,000			
		EQUIPMENT		1,000			
		TOTAL FUNDING	AGS	2,000C			C
62.		WIN, LIBRARY/LEARNING CENTER, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF SITE IMPROVEMENTS FOR A NEW LIBRARY/ LEARNING CENTER, INCLUDING GROUND AND SITE IMPROVEMENTS, AND APPURTENANCES.					
		PLANS		25			
		DESIGN		25			
		CONSTRUCTION		300			
		TOTAL FUNDING	UOH	350C			C
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
63.	511	SYS, UNIVERSITY OF HAWAII BOOKSTORES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES, SYSTEMWIDE.					
		DESIGN		2			
		CONSTRUCTION		996			
		EQUIPMENT		2			
		TOTAL FUNDING	UOH	1,000W			W
64.	521	SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE AND RELATED IMPROVEMENTS AT UNIVERSITY CAMPUSES, SYSTEMWIDE.					
		DESIGN		734			
		CONSTRUCTION		4,437		3,433	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT			1		1
		TOTAL FUNDING	UOH	5,172C		3,434C	
65.	531	SYS, MODIFICATIONS FOR ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR ACCESSIBILITY IMPROVEMENTS. PROJECT TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.					
		DESIGN			583		
		CONSTRUCTION			485	4,857	
		EQUIPMENT					1
		TOTAL FUNDING	AGS	1,068C		4,858C	
66.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		PLANS			50		
		DESIGN			556		
		CONSTRUCTION			3,338	1,763	
		TOTAL FUNDING	AGS	3,944C		1,763C	
67.	537	SYS, FIRE SAFETY IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS.					
		DESIGN			278		
		CONSTRUCTION			469	3,028	
		TOTAL FUNDING	AGS	747C		3,028C	
68.	541	SYS, FACILITIES IMPROVEMENTS-REPAIRS AND MAINTENANCE, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.					
		PLANS			100		100
		DESIGN			1,000		1,000
		CONSTRUCTION			8,899	8,899	
		EQUIPMENT			1		1
		TOTAL FUNDING	UOH	10,000C		10,000C	

H. CULTURE AND RECREATION

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
UOH881 - AQUARIA							
1.	579	UHM, WAIKIKI AQUARIUM-SEA WALL AND WALKWAY, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION AND REPAIR OF THE WAIKIKI AQUARIUM SEA WALL AND WALKWAY.					
		DESIGN			71		
		CONSTRUCTION			912		
		TOTAL FUNDING	AGS		983C		C
AGS881 - PERFORMING & VISUAL ARTS EVENTS							
2.	I117	STATE ART GALLERY AT NO. 1 CAPITOL DISTRICT BUILDING, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A STATE ART GALLERY FOR THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) ON THE SECOND FLOOR OF THE NO.1 CAPITOL DISTRICT BUILDING.					
		CONSTRUCTION			3,042		525
		EQUIPMENT			216		
		TOTAL FUNDING	AGS		3,258B		525B
3.	I119	WORKS OF ART MASTER PLANNING, STATEWIDE					
		PLANS AND DESIGN FOR THE INTEGRATION OF THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) WORKS OF ART PROGRAM INTO THE ARCHITECTURAL DESIGN OF PROPOSED EDUCATIONAL AND GOVERNMENT FACILITIES, STATEWIDE.					
		PLANS			100		100
		DESIGN			100		100
		TOTAL FUNDING	AGS		200B		200B
LNR806 - PARK DEVELOPMENT AND OPERATION							
4.	F31	WAILUA RIVER STATE PARK, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF SEWAGE SYSTEM IMPROVEMENTS AT FERN GROTTO AND OTHER RELATED IMPROVEMENTS.					
		PLANS			50		
		DESIGN			200		
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		250C		1,000C
5.	F46	KOKEE/WAIMEA CANYON STATE PARK COMPLEX, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO PARK WATER STORAGE AND DISTRIBUTION SYSTEM.					
		PLANS			250		
		DESIGN					200
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		250C		1,200C
6.	F55	WAINAPANAPA STATE PARK, MAUI					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS FOR THE PREPARATION OF A MASTER PLAN AND ENVIRONMENTAL IMPACT STATEMENT INCLUDING A CULTURAL IMPACT/ ASSESSMENT.					
		PLANS			250		
		TOTAL FUNDING	LNR		250C		C
7.	F59	KAUMAHINA STATE WAYSIDE, MAUI					
		DESIGN AND CONSTRUCTION OF NEW COMFORT STATION AND OTHER RELATED ADA IMPROVEMENTS.					
		DESIGN			150		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	LNR		1,150C		C
8.	H09	LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS TO PARK GROUNDS AND FACILITIES FOR HEALTH, SAFETY, ACCESSIBILITY FOR THE PHYSICALLY CHALLENGED, AND COMPLYING WITH THE FEDERAL CONSENT DECREE.					
		DESIGN			250		250
		CONSTRUCTION			1,000		1,000
		TOTAL FUNDING	LNR		1,250C		1,250C
9.	H45	SACRED FALLS STATE PARK, OAHU					
		PLANS FOR UPDATE TO EVALUATE PHYSICAL ENVIRONMENT WITH RECOMMENDATIONS FOR MITIGATING HAZARDS/LIABILITY TO THE STATE.					
		PLANS			250		
		TOTAL FUNDING	LNR		250C		C
10.	F46A	KOEKEE/WAIMEA CANYON STATE PARK COMPLEX, KAUAI					
		PLANS FOR THE PREPARATION OF A DEVELOPMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT INCLUDING A CULTURAL IMPACT ASSESSMENT.					
		PLANS			500		
		TOTAL FUNDING	LNR		500C		C

LNR801 - OCEAN-BASED RECREATION

11. 210C WAILOA BOAT HARBOR IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCTION FOR THE REPAIR AND IMPROVEMENT OF DOCK FACILITIES AT WAILOA SMALL BOAT HARBOR; AND IMPROVEMENT AND EXPANSION OF THE TRUCK AND TRAILER PARKING AREA FOR THE WAILOA BOAT RAMP.

DESIGN		50		50
CONSTRUCTION		250		250
TOTAL FUNDING	LNR	300D		300D

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
12.	246A	LAHAINA BOAT HARBOR REPLACEMENT, REPAIRS, IMPROVEMENTS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT, REPAIRS, IMPROVEMENTS TO LAHAINA BOAT HARBOR PIERS.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION					800
		TOTAL FUNDING	LNR		100E		800E
13.	246B	LAHAINA BOAT HARBOR COMFORT STATION REPLACEMENT, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT OF A COMFORT STATION AT LAHAINA BOAT HARBOR.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION					500
		TOTAL FUNDING	LNR		20C		100C
			LNR		80N		400N
14.	246C	LAHAINA BOAT HARBOR FERRY PIER, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF FERRY PIER AT LAHAINA BOAT HARBOR.					
		PLANS			250		
		DESIGN			250		
		CONSTRUCTION					2,000
		TOTAL FUNDING	LNR		100C		400C
			LNR		400N		1,600N
15.	271A	ALA WAI HARBOR FLOATING DOCKS REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF FLOATING DOCKS F AND G.					
		DESIGN			100		
		CONSTRUCTION					1,200
		TOTAL FUNDING	LNR		100E		1,200E
16.	275B	WAIANAE BOAT HARBOR PIER REPAIRS AND IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS AND IMPROVEMENTS TO THE CONCRETE PIERS AND FINGER PIERS AT THE WAIANAE SMALL BOAT HARBOR.					
		PLANS			30		
		DESIGN			70		
		CONSTRUCTION					750
		TOTAL FUNDING	LNR		100D		750D
17.	276A	HALEIWA BOAT HARBOR REPLACEMENT, REPAIRS, AND IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT, REPAIRS, IMPROVEMENTS TO HALEIWA BOAT HARBOR.					
		PLANS			40		
		DESIGN			50		
		CONSTRUCTION					900

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	LNR		90D		900D
18.	276B	HALEIWA BOAT HARBOR FIRE PROTECTION SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF A FIRE PROTECTION SYSTEM.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION					100
		TOTAL FUNDING	LNR		20D		100D
19.	299A	PLANNING FOR BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS FOR CONTINUED STUDIES, RESEARCH, AND ADVANCE PLANNING OF BOAT HARBOR FACILITIES ON ALL ISLANDS.					
		PLANS			125		125
		TOTAL FUNDING	LNR		125D		125D
20.	299B	IMPROVEMENTS TO BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS EXISTING BOAT HARBOR FACILITIES THROUGHOUT THE STATE INCLUDING DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING ADMINISTRATIVE OFFICES, AND BOAT RAMPS.					
		PLANS			30		30
		DESIGN			30		30
		CONSTRUCTION			240		240
		TOTAL FUNDING	LNR		300D		300D
21.	299C	BOAT RAMP IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS AND IMPROVEMENTS TO VARIOUS BOAT RAMP FACILITIES, STATEWIDE, INCLUDING DREDGING, PAVING, UTILITIES, LOADING DOCKS, COMFORT STATIONS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			50		50
		DESIGN			50		50
		CONSTRUCTION			400		400
		TOTAL FUNDING	LNR		125D		125D
			LNR		375N		375N

AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM

22. SA0001 ALOHA STADIUM, RENOVATE UPPER AND LOWER CONCOURSE RESTROOMS, OAHU

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION TO REMOVE EXISTING TOILET FIXTURES AND PARTITIONS AND INSTALL NEW FIXTURES AND PARTITIONS THAT COMPLY WITH THE AMERICANS WITH DISABILITIES ACT; REPLACE TOILET AND RESTROOM DISPENSERS AND OTHER MISC. HARDWARE; AND PERFORM VARIOUS OTHER WORK NEEDED TO SATISFY ARCHITECTURAL, REGULATORY, AND OPERATIONAL REQUIREMENTS OF THE RESTROOM FACILITIES.					
		DESIGN		75		25	
		CONSTRUCTION		750		250	
		TOTAL FUNDING	AGS	825B		275B	

LNR807 - PARK INTERPRETATION

23. F02B INTERPRETIVE PROGRAM DEVELOPMENT, STATEWIDE

DESIGN AND CONSTRUCTION FOR A SERIES OF INTERPRETIVE SIGNS AND KIOSKS IN SELECTED STATE PARKS.

DESIGN		10		10
CONSTRUCTION		50		50
TOTAL FUNDING	LNR	60B		60B

24. F54B WAILUA RIVER STATE PARK, KAUAI

CONSTRUCTION FOR INTERPRETIVE DEVICES, LANDSCAPING AND RESTORATION OF MALAE HEIAU.

CONSTRUCTION		250		
TOTAL FUNDING	LNR	250B		B

25. F57B KAHANA VALLEY STATE PARK, OAHU

CONSTRUCTION FOR RECONSTRUCTION OF KAM MON STORE AS AN INTERPRETIVE CENTER.

CONSTRUCTION				300
TOTAL FUNDING	LNR		B	300B

26. F74B HAENA STATE PARK, KAUAI

DESIGN AND CONSTRUCTION TO DEVELOP AN INTERPRETIVE PROGRAM INCLUDING THE RESTORATION OF TARO LO'I.

DESIGN		50		
CONSTRUCTION				200
TOTAL FUNDING	LNR	50B		200B

I. PUBLIC SAFETY

PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER

1. 20011 MAUI COMMUNITY CORRECTIONAL CENTER, NEW BED EXPANSION AND RENOVATIONS, MAUI

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
DESIGN FOR THE RENOVATION AND EXPANSION OF THE MAUI COMMUNITY CORRECTIONAL CENTER AND ANY SATELLITE ADJUNCTS. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS AS MAY BE AVAILABLE.							
		DESIGN			500		
		TOTAL FUNDING	AGS		500C		C
PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER							
2.	20012	OAHU COMMUNITY CORRECTIONAL CENTER, SEWER IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION OF SEWER IMPROVEMENTS AT THE OAHU COMMUNITY CORRECTIONAL CENTER.					
		DESIGN			13		
		CONSTRUCTION			78		
		TOTAL FUNDING	AGS		91C		C
PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER							
3.	20013	WOMEN'S COMMUNITY CORRECTIONAL CENTER, NEW ARMORY, OAHU					
		DESIGN AND CONSTRUCTION OF NEW ARMORY AT THE WOMEN'S COMMUNITY CORRECTIONAL CENTER.					
		DESIGN			23		
		CONSTRUCTION			140		
		TOTAL FUNDING	AGS		163C		C
PSD900 - GENERAL ADMINISTRATION							
4.	20014	GENERAL ADMINISTRATION, TRANSITION HOUSING FOR FEMALE OFFENDERS, STATEWIDE					
		PLANS FOR TRANSITION HOUSING FOR FEMALE OFFENDERS, STATEWIDE.					
		PLANS			153		
		TOTAL FUNDING	AGS		153C		C
LNR810 - PREVENTION OF NATURAL DISASTERS							
5.		KAHUKU FLOOD CONTROL, OAHU					
		PLANS FOR A FEASIBILITY STUDY TO REVIEW ALTERNATIVES TO MITIGATE FLOODING IN KAHUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,000		
		TOTAL FUNDING	LNR		500C		C
			LNR		250N		N
			LNR		250S		S
DEF110 - AMELIORATION OF PHYSICAL DISASTERS							
6.	C13	DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT & UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		PLANS			1		1
		LAND			1		1
		DESIGN			70		77
		CONSTRUCTION			748		823
		EQUIPMENT			146		161
		TOTAL FUNDING	AGS		866C		963C
			AGS		100N		100N

7. A0201 BIRKHIMER TUNNEL & SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH & SAFETY IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL & SUPPORT FACILITIES TO INCLUDE A FIRE HYDRANT, A FIRE SUPPRESSION SPRINKLER SYSTEM, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS.

PLANS		1	
LAND		1	
DESIGN		117	5
CONSTRUCTION			250
EQUIPMENT			280
TOTAL FUNDING	AGS	119C	535C

J. INDIVIDUAL RIGHTS

AGR812 - MEASUREMENT STANDARDS

1. 192 01 DOA ANNEX NO.3, NEW MEASUREMENT STANDARDS AND COMMODITIES BUILDING, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT A NEW BUILDING FOR THE MEASUREMENT STANDARDS AND COMMODITIES PROGRAM ON OAHU.

DESIGN		185	
CONSTRUCTION		2,890	
EQUIPMENT		50	
TOTAL FUNDING	AGS	3,125C	C

CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER

2. HAWAII PUBLIC TELEVISION FOUNDATION, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TRANSMISSION SITES AND A DIGITAL BROADCASTING SYSTEM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN		1	
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION EQUIPMENT			1		
		TOTAL FUNDING	CCA		1,998		
					2,000C		C
K. GOVERNMENT-WIDE SUPPORT							
GOV100 - OFFICE OF THE GOVERNOR							
1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE					
		PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.					
		PLANS			1		1
		TOTAL FUNDING	GOV		1C		1C
2.	G03	WASHINGTON PLACE, OAHU					
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO WASHINGTON PLACE. PROJECT MAY INCLUDE REPAIRS AND IMPROVEMENTS.					
		DESIGN			10		
		CONSTRUCTION			190		
		TOTAL FUNDING	AGS		200C		C
BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING							
3.	00-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.					
		CONSTRUCTION			30,000		30,000
		TOTAL FUNDING	BUF		30,000C		30,000C
4.	00-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.					
		CONSTRUCTION			53,535		47,340
		TOTAL FUNDING	BUF		53,535C		47,340C
5.		BISHOP MUSEUM, OAHU					
		CONSTRUCTION FOR THE BISHOP MUSEUM'S SCIENCE LEARNING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION			5,000		
		TOTAL FUNDING	AGS		5,000C		C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
AGS131 - INFORMATION PROCESSING SERVICES							
6. ICSD01 KALANIMOKU BUILDING EMERGENCY GENERATOR, OAHU							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CONSTRUCTION OF MOUNTING PADS AND PROTECTIVE ENCLOSURES FOR AND TO INSTALL GENERATORS, AUTOMATIC SWITCHES, CONDUITS, ELECTRICAL WIRING AND FUEL TANKS AT THE KALANIMOKU BUILDING.							
					100		
					150		
					1,000		
					750		
TOTAL FUNDING				AGS	2,000C		C

AGS161 - COMMUNICATION

7. ICSD02 RAINBOW NEW RADIO SITES AND TOWERS, STATEWIDE

		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO SUPPORT THE MODERNIZATION OF THE SHARED STATE AND FEDERAL MICROWAVE SYSTEM TO DIGITAL OPERATION FOR USE BY PUBLIC SAFETY, EMERGENCY, AND CIVIL DEFENSE STATEWIDE CONNECTIONS AND TO SUPPORT THE EQUIPMENT OF MAUI AND HAWAII COUNTIES RADIO AT THESE NEW FACILITIES.					
		PLANS		50			
		LAND		50			
		DESIGN		425			
		CONSTRUCTION		1,620		3,425	
		EQUIPMENT		180		475	
		TOTAL FUNDING	AGS	2,325C		3,900C	

LNR101 - PUBLIC LANDS MANAGEMENT

8. E78A KA IWI SCENIC SHORELINE, OAHU

		DESIGN AND CONSTRUCTION OF ROADWAY, PARKING, UTILITIES, AND NEW LOOKOUT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		10			
		CONSTRUCTION		7,990			
		TOTAL FUNDING	LNR	4,000B			B
			LNR	4,000N			N

9. E00000 MAUNALAHA HEIGHTS SUBDIVISION WATER SYSTEM IMPROVEMENTS, OAHU

		PLANS, DESIGN, AND CONSTRUCTION FOR WATER SYSTEM IMPROVEMENTS AT MAUNALAHA HEIGHTS SUBDIVISION TO PROVIDE FIREFLOW PROTECTION.					
		PLANS		25			
		DESIGN		100			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION					555
		TOTAL FUNDING	LNR	125C			555C
10.	E79	ACQUISITION OF LAND IN WAIOMAO, PALOLO, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE PURCHASE OF ONE (1) PARCEL OF LAND (HOUSELOT AND IMPROVEMENTS) IN WAIOMAO, PALOLO, OAHU.					
		PLANS					10
		LAND		505			
		DESIGN					5
		CONSTRUCTION					180
		TOTAL FUNDING	LNR	505B			195B
11.	E00C00	KAPALAMA INDUSTRIAL AREA INFRASTRUCTURE IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS FOR RELOCATION OF DEPARTMENT OF AGRICULTURE FACILITIES, PRODUCE CENTER AND TENANT FROM KAKAAKO TO KAPALAMA MILITARY RESERVATION AREA.					
		PLANS		250			
		DESIGN		150			
		CONSTRUCTION		1,350			
		TOTAL FUNDING	AGS	1,750C			C
AGS221 - CONSTRUCTION							
12.	B27	ADVANCED PLANNING, STATEWIDE					
		PLANS FOR PROVIDING ASSISTANCE TO THE PUBLIC, STATE, AND COUNTIES IN MATTERS RELATING TO DAGS' PUBLIC WORKS DIVISION AND INCLUDES THE PREPARATION OF PROGRAMS, REPORTS, STUDIES, INVENTORIES, REVIEWS, AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS' FUNCTIONS.					
		PLANS		225			75
		TOTAL FUNDING	AGS	225C			75C
13.	B28	STATE OFFICE BUILDING, REMODELING, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. PROJECT TO INCLUDE REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, ENERGY CONSERVATION, LIGHTING, VENTILATION, PLUMBING, ELECTRICAL AND DATA SYSTEMS.					
		DESIGN		250			20
		CONSTRUCTION		1,300			180

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	AGS	1,550C		200C	
14.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		6,268		6,268	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	6,272C		6,272C	
15.	F109	AIR CONDITIONING SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		200			
		CONSTRUCTION		1,800			
		TOTAL FUNDING	AGS	2,000C			C
16.	H101	STATE OFFICE BUILDINGS, ADA PUBLIC ACCESSIBILITY, STATEWIDE, PHASE II					
		DESIGN AND CONSTRUCTION TO PROVIDE MINIMUM PUBLIC ACCESSIBLE PARKING AND PATHWAY TO ALL PROGRAMS AND AN ADA EVACUATION STUDY FOR ALL STATE OFFICE BUILDINGS SERVING THE PUBLIC.					
		DESIGN		100			
		CONSTRUCTION		900			
		TOTAL FUNDING	AGS	1,000C			C
17.	B101M	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MITIGATION/ELIMINATION OF CONDITIONS HAZARDOUS TO HEALTH AND SAFETY, INCLUDING THE REMOVAL OF HAZARDOUS MATERIALS AND/OR CORRECTIONS OF PHYSICAL CONDITIONS IN STATE FACILITIES TO MEET CURRENT CODE AND/OR SAFETY REQUIREMENTS, STATEWIDE.					
		DESIGN		95		95	
		CONSTRUCTION		660		660	
		EQUIPMENT		5		5	
		TOTAL FUNDING	AGS	760C		760C	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
AGS233 - BUILDING REPAIRS AND ALTERATIONS							
18.	CSD01	LUMP SUM CIP-PUBLIC BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC OFFICE BUILDINGS, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC FACILITIES.					
		DESIGN		600		600	
		CONSTRUCTION		4,400		4,400	
		TOTAL FUNDING	AGS	5,000C		5,000C	
SUB301 - COUNTY OF HAWAII							
19.		OCEAN VIEW EXPLORATORY WELL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPLORATORY WELL NEAR MAMALAHOA HIGHWAY FOR OCEAN VIEW IN KAU, INCLUDING PUMPS, CONTROLS, STORAGE RESERVOIR AND OTHER INCIDENTAL WORK.					
		PLANS		25			
		DESIGN		100			
		CONSTRUCTION		375			
		TOTAL FUNDING	COH	500C			C
20.		HILO LANDFILL CLOSURE AND SOLID WASTE MANAGEMENT SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE HILO LANDFILL CLOSURE AND SOLID WASTE MANAGEMENT SYSTEM.					
		PLANS		100			
		DESIGN		899			
		CONSTRUCTION		1			
		TOTAL FUNDING	COH	1,000C			C
21.		KAWAILANI STREET BRIDGE REPLACEMENT, HAWAII					
		PLANS AND DESIGN TO REPLACE THE KAWAILANI STREET BRIDGE.					
		PLANS		250			
		DESIGN		250			
		TOTAL FUNDING	COH	500C			C
SUB401 - COUNTY OF MAUI							
22.		UPCOUNTRY MAUI WATERSHED PROJECT, MAUI					
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1			
		CONSTRUCTION		1,999			
		TOTAL FUNDING	COM	2,000C			C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
SUB501 - COUNTY OF KAUAI							
23.		ELEEELE WATER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE ELEEELE WATER SYSTEM WATERLINE IN THE VICINITY OF ELEEELE SCHOOL.					
		DESIGN			80		
		CONSTRUCTION			245		
		TOTAL FUNDING	COK		325C		C
24.		LIHUE WATER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE LIHUE WATER SYSTEM WATERLINE IN THE VICINITY OF KAUAI HIGH SCHOOL.					
		DESIGN			70		
		CONSTRUCTION			265		
		TOTAL FUNDING	COK		335C		C

PART V. CAPITAL IMPROVEMENT PROGRAM PROVISIONS

SECTION 92. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,250,000 for fiscal year 2001-2002 and the sum of \$1,250,000 for fiscal year 2002-2003 shall be used for Hawaii community development authority capital improvements program staff costs, statewide; provided further that the Hawaii community development authority shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the Hawaii community development authority shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 93. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$1,800,000 for fiscal year 2001-2002 and the sum of \$1,800,000 for fiscal year 2002-2003 shall be used for airports division capital improvements program staff costs, statewide; provided further that the airports division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year;

and provided further that the airports division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 94. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$750,000 for fiscal year 2001-2002 and the sum of \$750,000 for fiscal year 2002-2003 shall be used for harbors division capital improvements program staff costs, statewide; provided further that the harbors division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the harbors division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 95. Provided that of the special funds, revenue bond funds, and other federal funds appropriations for highways administration (TRN 595), the sum of \$19,000,000 for fiscal year 2001-2002 and the sum of \$19,000,000 for fiscal year 2002-2003 shall be used for highways division capital improvements program staff costs, statewide; provided further that the highways division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the highways division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 96. Provided that of the general obligation bond fund appropriation for land and natural resources - natural physical environment (LNR 906), the sum of \$1,560,000 for fiscal year 2001-2002 and the sum of \$1,560,000 for fiscal year 2002-2003 shall be used for department of land and natural resources capital improvements program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 97. Provided that of the general obligation bond fund appropriation for rental housing services (BED 220), the sum of \$10,000,000 for fiscal biennium 2001-2003 shall be used for design and construction for the demolition and replacement of Kuhio Park Terrace; and provided further that no funds shall be

expended unless matched by a sum of not less than \$35,000,000 from federal contributions.

SECTION 98. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$250,000 for fiscal year 2001-2002 and the sum of \$250,000 for fiscal year 2002-2003 shall be used for department of education capital improvements program staff costs, statewide; provided further that the department of education shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the department of education shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 99. After the objectives of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto.

SECTION 100. In the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided that such supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project, and may only be made to supplement currently authorized capital investment project cost elements; and provided further that a report of all transfers in and expenditures from the project adjustment fund shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 101. Provided that any amount appropriated for any capital improvements program project authorized in Part II and listed in formal education, Part G of Part IV of this Act and funded from the State Educational Facilities Improvement Special Fund and is excess of the amount required to complete the project, such excess funds may be expended with the approval of the Governor for any or all the following projects and purpose:

1. Waipahu High School, Oahu
Design, construction, and equipment for an eight-classroom building; ground and site improvements; equipment and appurtenances.
2. Waianae High School, Oahu
Design, construction, and equipment for an eight-classroom building; ground and site improvements; equipment and appurtenances.
3. Kealahou Intermediate School, Hawaii
Construction, and equipment for administration/library and renovation

- of temporary facilities into classrooms; ground and site improvements; equipment and appurtenances.
4. Lokelani Intermediate School, Maui
Design, construction, and equipment for a six-classroom building; ground and site improvements; equipment and appurtenances.
5. Ewa Beach Elementary, Oahu
Design, construction, and equipment for a new six-classroom building; ground and site improvements; equipment and appurtenances.
6. King Kekaulike High, Maui
Design for a new six-classroom building; ground and site improvements; equipment and appurtenances.
7. Lahaina Intermediate School, Maui
Design, construction, and equipment for a new eight-classroom building; ground and site improvements; equipment and appurtenances.
8. Hana High and Elementary School, Maui
Design, construction, and equipment for a new six-classroom building; ground and site improvements; equipment and appurtenances.
9. Royal Kunia Elementary, Oahu
Design for the 1st and 2nd increment of a new elementary school.
10. Ocean Point Elementary School, Oahu
Design of the new elementary school.

SECTION 102. Provided that of the general obligation bond fund appropriation for physical plant operations and maintenance (AGS 807), the sum of \$50,000,000 in fiscal year 2001-2002 and the sum of \$10,000,000 in fiscal year 2002-2003 shall be expended only for repairs and maintenance of school facilities.

SECTION 103. Provided that of the general obligation bond fund appropriation for university of Hawaii systemwide support (UOH 900), the sum of \$10,000,000 in fiscal year 2001-2002 and the sum of \$10,000,000 in fiscal year 2002-2003 shall be expended only for improvements and repairs and maintenance of university facilities systemwide.

SECTION 104. Provided that of the general obligation bond fund appropriation for land and natural resources - park development and operation (LNR 806), the sum of \$500,000 for fiscal year 2001-2002 shall be used for plans for the preparation of a development plan and environmental impact statement including a cultural impact assessment for the Kokee/Waimea Canyon State Park Complex; and provided further that the development plan shall include, but not be limited to the following:

- (1) Repair and maintenance of roads, including safety upgrades;
- (2) Adequacy of water supply and sewage systems;
- (3) Alternative strategies to enhance revenues (cabins, trails, campgrounds, concessions, user fees, etc.);
- (4) Development of additional cabins and campsites;
- (5) Review of long-term leases;
- (6) Review of existing hiking trails;
- (7) Solicitation of proposals for concessions and dining facilities operated by private vendors;
- (8) Review of fishing seasons;
- (9) Planting of maile and mokihana, as well as other types of flora;
- (10) Development of long-range plans; and

- (11) Management issues that affect the condition of the area's natural resources within and adjacent to the Kokee and Waimea Canyon State Parks.

SECTION 105. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$6,272,000 for fiscal year 2001-2002 and the sum of \$6,272,000 for fiscal year 2002-2003 shall be used for department of accounting and general services capital improvements program staff costs, statewide; provided further that the department of accounting and general services shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall include the actual expenditures for each permanent and non-permanent capital improvements program related positions for the first five months of the fiscal year; and provided further that the department of accounting and general services shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 106. Act 91, Session Laws of Hawaii 1999, Section 64, as amended by Act 281, Session Laws of Hawaii 2000, Section 5, is amended, by amending Item G-60B to read:

“ROOSEVELT HIGH SCHOOL, OAHU

PLANS, DESIGN, CONSTRUCTION, AND
EQUIPMENT FOR THE RENOVATION AND REPAIR
OF BUILDING A, PHASE I. GROUND AND SITE
IMPROVEMENTS; EQUIPMENT AND
APPURTENANCES.

	FY 2000	FY 2001
PLANS		300
DESIGN		200
[CONSTRUCTION		999]
CONSTRUCTION		699
EQUIPMENT		1
TOTAL FUNDING	AGS	1,200C”

SECTION 107. Act 91, Session Laws of Hawaii 1999, Section 64, as amended by Act 281, Session Laws of Hawaii 2000, Section 5, is amended, by amending Item C-85P to read:

“SP008 KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENT IN THE
VICINITY OF KAHUKU HOSPITAL, OAHU

DESIGN AND CONSTRUCTION TO REPLACE
HOSPITAL DITCH CULVERT AND REPLACEMENT
OF KII BRIDGE.

	FY 2000	FY 2001
DESIGN		420
[CONSTRUCTION		980]
CONSTRUCTION		7,280
TOTAL FUNDING	TRN	1,400E
	TRN	6,000N
	TRN	300S”

SECTION 108. Any law to the contrary notwithstanding, the appropriation under Act 217, Session Laws of Hawaii 1987, section 2, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
H-1	\$ 22,902 C”

SECTION 109. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended by Act 390, Session Laws of Hawaii 1988, section 6, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
H-40	\$ 24,448 C”

SECTION 110. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
G-60	\$ 2,397 C
G-67	490,200 C
G-68	1,642 C
G-78	150,000 C
G-89	1,087 A”

SECTION 111. Any law to the contrary notwithstanding, the appropriation under Act 314, Session Laws of Hawaii 1989, section 2, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
K-58	\$ 30,715 C”

SECTION 112. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended by Act 299, Session Laws of Hawaii 1990, section 6, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
A-21	\$ 80,820 C”

SECTION 113. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
G-151	\$ 49,488 A
G-151	160,133 C
G-162	438,748 C”

SECTION 114. Any law to the contrary notwithstanding, the appropriation under Act 296, Session Laws of Hawaii 1991, section 165, as amended by Act 300, Session Laws of Hawaii 1992, section 6, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
G-143	\$ 17,616 A"

SECTION 115. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended by Act 287, Session Laws of Hawaii 1996, section 5, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
G-1	\$ 91,488 B
G-5	10,000 B
G-8	137,899 B
G-12	87,098 B
G-23	43,370 B
G-26	30,031 B
G-33	53,365 C
G-36	719,342 B
G-36A	3,932 C
G-43	196,016 C
G-46	321 C
G-62	435,803 C
G-64	56,501 C
G-65	136,351 C
G-71	87,757 C
G-88	96,810 C
G-98	1,004,454 C
G-99A	14,685 C
H-3A	\$ 30,000 C"

SECTION 116. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
E-2	\$ 18,316 C
G-1	237,969 B
G-6	6,335 B
G-8	13,690 B
G-9	25,721 B
G-18B	61,898 B
G-24	426,804 B
G-25	125,445 B
G-26	15,709 B
G-30	340,000 B
G-32	37,102 B
G-41	19,415 B
G-42A	181,244 B
G-43	2,365 B
G-48	167,702 B
G-52	45,941 B

<u>"Item No.</u>	<u>Amount (MOF)</u>
G-57	3,418 B
G-60C	7,568 C
G-67C	31,056 C
G-73	20,523 C
G-76	53,391 C
G-78	2,310 C
G-79	92,444 C
G-83	706 C
G-88	44,407 C
G-90	9,201 C
G-90A	14,538 C
G-91	1,916 C
G-92	125,000 C
G-115	1,991 C
H-34	323,500 C"

SECTION 117. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 91, Session Laws of Hawaii 1999, section 64, as amended by Act 281, Session Laws of Hawaii 2000, section 5, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
G-59	\$ 750,000 N"

SECTION 118. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
C-9B	\$5,220,000 B
C-10A	1,134,000 B
H-18	100,000 B
H-21	250,000 B
H-22	220,000 B"

PART VI. ISSUANCE OF BONDS

SECTION 119. GOVERNOR'S DISCRETIONARY POWERS. When it is deemed in the public interest of the State, the governor, in his discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized in this Act or any other act currently authorized by the legislature, where the method of financing is designated to be the general obligation bond fund. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 120. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements

program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such airport revenue bonds shall to the extent not paid from the proceeds of such bonds be paid from the airport revenue fund.

The governor, in his discretion, is authorized to use the airport revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds.

SECTION 121. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued, to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in his discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 122. HIGHWAY REVENUE BONDS. The department of transportation is authorized to issue highway revenue bonds for highway capital improvement projects authorized in part II and listed in part IV of this Act and designated to

be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued). And to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the State highway fund.

The governor, in his discretion, is authorized to use moneys in the State highway fund to finance those highway capital improvement projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by revenue bond funds.

SECTION 123. SMALL BOAT HARBOR REVENUE BONDS. The department of land and natural resources is authorized to issue small boat harbor revenue bonds for small boat harbor capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the construction period of the capital improvement project for which such small boat harbor revenue bonds are issued, to establish, maintain, or increase reserves for the small boat harbor revenue bonds, and to pay the expenses for the issuance of such bonds. The aforementioned small boat harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on the small boat harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from small boat harbors and related facilities under the ownership of the State or operated and managed by the department. The revenues shall include rents, mooring, wharfage, dockage, and permit fees, and other fees or charges presently or hereafter derived from or arising through the ownership and operation of small boating activities and the furnishing and supplying of the services thereof. The expenses of the issuance of such small

boat harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

SECTION 124. PUBLIC FACILITY REVENUE BONDS. The Hawaii Community Development Authority is authorized to issue revenue bonds for public facility projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated to construct, acquire, remodel, furnish, and equip any public facility, including acquisition of the site thereof. Additionally, if so determined by the authority and approved by the governor, the principal amount of such bonds shall be in an additional amount deemed necessary by the Authority to pay interest on such revenue bonds during the estimated period of construction of the capital improvement project for which such public facility revenue bonds are issued, to establish, maintain, or increase reserves for such public facility revenue bonds, and to pay all or any part of the expenses related to the issuance of such public facility revenue bonds. The aforementioned public facility revenue bonds shall be issued pursuant to the provisions of Part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such public facility revenue bonds, to the extent not paid from the proceeds of such public facility revenue bonds, shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

SECTION 125. HAWAIIAN HOME LANDS REVENUE BONDS. The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to increase reserves for the Hawaiian home lands revenue bonds and to pay the expenses of the issuance of such bonds. Notwithstanding any limitations contained in any prior authorization of Hawaiian home lands revenue bonds, the aforementioned Hawaiian home lands revenue bonds and all prior authorized revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable from and secured by the revenues from Hawaiian home lands, revenues from available lands and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the Hawaiian home lands special fund.

The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by the Hawaiian home lands revenue bond funds.

SECTION 126. HOUSING REVENUE BONDS. The housing finance and development corporation is authorized to issue housing revenue bonds for housing capital improvement projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds in such principal amounts as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the corporation and approved by the governor, such additional amounts as may be deemed necessary by the corporation to increase reserves for the housing revenue bonds and to pay the expenses of the issuance of such bonds. The aforementioned housing revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on housing revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable and secured by revenues from housing and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of housing and related facilities.

SECTION 127. HOSPITAL REVENUE BONDS. The Hawaii Health Systems Corporation is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and if so determined by the corporation and approved by the governor, such additional principal amount as may be deemed necessary by the corporation to pay interest on such hospital revenue bonds during the estimated period of construction of the capital improvements program project for which such hospital revenue bonds are issued, to establish, maintain, or increase reserves for such hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of such hospital revenue bonds. The aforementioned hospital revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time, except that such bonds shall be issued in the name of the corporation and not in the name of the State. The principal of and interest on such hospital revenue bonds, to the extent not paid from the proceeds of such hospital revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the corporation or operated and managed by the corporation, or such part of any thereof as the corporation may determine, including other moneys, rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of such hospital revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the facility administration fund of the corporation.

SECTION 128. SPECIAL FACILITY REVENUE BONDS. The High Technology Development Corporation is authorized to issue special facility revenue bonds for high technology special facility projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated to construct, acquire, remodel, furnish, and equip any high technology facility, including acquisition of the site thereof. Additionally, if so determined by corporation and approved by the governor, the principal amount of such bonds shall be in an additional amount deemed necessary by the corporation to pay interest on

such special facility revenue bonds during the estimated period of construction of the capital improvement project for which such high technology special facility revenue bonds are issued, to establish, maintain, or increase reserves for such high technology special facility revenue bonds, and to pay all or any part of the expenses related to the issuance of such high technology special facility revenue bonds. The aforementioned high technology special facility revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such high technology special facility revenue bonds, shall be payable from and secured by the revenues derived from the high technology facility for which the special facility revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

SECTION 129. HAWAII COMMUNITY DEVELOPMENT AUTHORITY SPECIAL FACILITY REVENUE BONDS. The Hawaii Community Development Authority is authorized to issue special facility revenue bonds for special facility projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated to construct, acquire, remodel, furnish, and equip any special facility, including acquisition of the site thereof. Additionally, if so determined by the authority and approved by the governor, the principal amount of such bonds shall be in an additional amount deemed necessary by the Authority to pay interest on such special facility revenue bonds during the estimated period of construction of the capital improvement project for which such special facility revenue bonds are issued, to establish, maintain, or increase reserves for such special facility revenue bonds, and to pay all or any part of the expenses related to the issuance of such special facility revenue bonds. The aforementioned special facility revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such special facility revenue bonds, to the extent not paid from the proceeds of such special facility revenue bonds, shall be payable from and secured by the revenues derived from the special facility for which their special facility revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

PART VII. SPECIAL PROVISIONS

SECTION 130. Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are insufficient to meet and pay all such obligations when due in accordance with the terms of such bonds, the governor shall direct the utilization of any or all appropriations available or unexpended from any other state program, as the first charge for the payment of principal and interest of the bonds when due; and provided further that the legislature shall, under procedures established in section 10 of article III of the Hawaii State Constitution, meet in special session to comply with the provisions of section 12 of article VII of the Hawaii State Constitution, which pledge the full faith and credit of the State for the payment of principal and interest on all general obligation and reimbursable general obligation bonds.

SECTION 131. All general obligation bond funds used for a public undertaking, improvement, or system, designated by the letter (D), shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improve-

ment or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed, as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, the economic development special fund, or other appropriate special fund, to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be by general obligation bond fund with debt service cost to be paid from the funds; provided that the governor shall submit a report to the legislature on such changes in the method of financing of such projects.

SECTION 132. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 2001-2003 which are unencumbered as of June 30, 2004, shall lapse as of that date; provided further that this lapsing date shall not apply to: a) appropriations for projects described in section 91 of this Act where the means of funding is designated to be the state educational facilities improvement special fund, and where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities; and b) non-general fund appropriations for projects described in section 91 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.

SECTION 133. The governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project, by this Act or any other prior or future Act which has not lapsed; provided that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project.

SECTION 134. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvement projects have been met, unrequired balances shall be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act and shall be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2004, as provided in section 132 of this Act.

SECTION 135. In the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; and provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall submit a report of all transfers in and expenditures from the project adjustment fund to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 136. In the event that the authorized appropriations specified for a capital improvement project listed in this Act is insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special fund or revolving fund responsible for cash or debt service payments for the projects or transfer unrequired balances from other unexpired projects in this or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, revenue bond funds, or revolving funds; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 137. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 138. In releasing funds for capital improvement projects, the governor shall consider the legislative intent and the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration legislative intent and the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 139. With the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is determined by all involved agencies and parties that it is advantageous to do so; and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 140. Where county capital improvement projects are partially or totally funded by state grants-in-aid as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 141. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects natural disasters, or unforeseen emergencies, provided that the effects of natural disaster, or unforeseen emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section.

SECTION 142. No appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake

new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 143. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency as provided by law.

SECTION 144. There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) the total amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by section 5(b) or later conveyed to the State by section 5(e), with the exception of such proceeds covered under section 171-19, Hawaii Revised Statutes, to be disposed of by the board of land and natural resources, and with the exception of such proceeds to be expended by the office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in part II of this Act to the department of education for the support of public schools, to the extent such proceeds are realized for the period beginning July 1, 2001 to June 30, 2003. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

SECTION 145. All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 146. Any law or provision to the contrary notwithstanding, in expending funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be expended. Affected agencies shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures so specified.

SECTION 147. With the approval of the director of finance, the Hawaii Health Systems Corporation in the department of health may transfer to the department of human services funds appropriated to the Hawaii Health Systems Corporation for the care and treatment of patients whenever the department of human services can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated critical access hospitals; provided further that the director of finance shall submit a report on amount of transfers and details on services for the previous fiscal year and fiscal year 2002 and fiscal year 2003; and provided further that this report shall be submitted twenty days prior to the 2002 and 2003 regular sessions.

SECTION 148. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled

nursing home care of indigents or medical indigents and to pay the department of health for such care. With the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made as provided elsewhere in this Act; and provided further that the director of finance shall submit a report on the transactions under this section; and provided further that this report shall be submitted twenty days prior to the 2002 and 2003 regular sessions.

SECTION 149. Provided that the department of human services shall use sixty percent of the most recent available profile of the customary fees of health care practitioners, adjusted to the seventy-fifth percentile within the limits of this appropriation, in establishing fees for individual practitioners for health care payments (HMS 230), in fiscal year 2001-2002 and in fiscal year 2002-2003.

SECTION 150. The governor may authorize the transfer of positions and funds from the department of health to the department of education to address Felix Consent Decree requirements; provided further that any transfers shall be based on the transfer of responsibility for Felix clients and/or treatments from the department of health to the department of education.

SECTION 151. Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations with the same means of funding, within an expending agency for operating purposes; and provided further that the governor shall submit a report to the legislature on all such transfers no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 152. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling, for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further, that all such actions shall be with the prior approval of the governor, and shall be consistent with appropriations provided in this Act, and with provisions of part II of chapter 37 of the Hawaii Revised Statutes.

SECTION 153. In the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session.

SECTION 154. Provided that the governor may approve the expenditure of federal funds which are in excess of levels authorized by the legislature when the legislature is not in session; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 155. In the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 156. Where any agency is authorized by general law to secure funds or other property from private organizations or individuals to be expended or utilized in connection with any authorized program, the agency, with the governor's approval, may enter into such undertaking, provided that the provisions of the undertaking comply with applicable State constitutional and statutory requirements.

SECTION 157. Except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources, or other appropriate agency; provided further that private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 158. The governor is authorized to transfer savings as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided that the effects of natural disaster or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State; and provided further that the legislature shall be notified in writing of such transfers of funding no later than fourteen days after the transfer is made.

SECTION 159. Except as otherwise provided, or except as prohibited by specific grant conditions, all federal or non-general fund reimbursements received by state programs shall be returned to the general fund, or other appropriate program fund; and provided further that the department of budget and finance shall submit a report on the transactions under this section; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.

SECTION 160. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 in fiscal year 2001-2002 and the sum of \$2,500 in fiscal year 2002-2003 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, president, and attorney general.

SECTION 161. Except as otherwise provided, the appropriation for the office of the governor (GOV 100), shall be expended at the discretion of the governor.

SECTION 162. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100), shall be expended at the discretion of the lieutenant governor.

SECTION 163. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services, may delegate that responsibility and transfer funds authorized for that purpose to the internal post audit program (AGS 104), when it is determined by such agencies that it is advantageous to do so.

SECTION 164. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for repair and alterations, may delegate responsibility and transfer funds to the construction program (AGS 221), for the implementation of such repair and alterations, when it is determined by such agencies that it is advantageous to do so.

SECTION 165. Agencies with appropriations authorized in part II of this Act for risk management costs shall transfer funds authorized for that purpose to risk management (AGS 203), for the administration and implementation of state risk management costs and expenses, except as otherwise provided by law.

SECTION 166. The director of finance is authorized to expend general fund savings or balances determined to be available from authorized general fund program appropriations, up to an aggregate total of \$20,000,000 for each fiscal year 2001-2002 and 2002-2003, for municipal lease payments under financing agreements entered into pursuant to chapter 37D, Hawaii Revised Statutes, to finance the acquisition of depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment; and provided further that designated expending agencies (including the department of education and the university of Hawaii) for municipal lease payments and for depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment authorized in this Act may delegate to the director of finance the implementation of such acquisitions when it is determined by all involved agencies that it is advantageous to do so.

SECTION 167. Provided that the legislative auditor shall conduct a financial and management study of the State's plant and non-domestic animal inspection, quarantine, and eradication programs as they relate to alien pest species; provided further that the study shall include but not be limited to a review of federal laws relating to alien pest inspection, quarantine, and eradication and where there are conflicts with State laws, if any; provided that the legislative auditor shall assess whether the State alien pest programs are organized in a manner that efficiently and effectively achieves the program objectives; provided further that the study shall investigate sources of funding for alien pest programs including federal funds, and fees; provided further that the study shall investigate sources of funding for alien pest programs including federal funds, and fees; provided further that a report of findings and recommendations shall be submitted to the legislature twenty days prior to the convening of the regular session of 2002; and provided further that the report shall contain recommendations on how Hawaii's alien pest inspection, quarantine, and eradication program can best be structured to effectively deal with the problem of alien pest introduction.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 168. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 169. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

ACT 260

SECTION 170. Material to be repealed is bracketed and stricken. New material in prior enacted laws is underscored.

SECTION 171. EFFECTIVE DATE. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

Note

1. So in original.

ACT 260

S.B. NO. 18

A Bill for an Act Making Appropriations for Salary Increases for Public Employees.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund all collective bargaining cost items in the arbitration award for collective bargaining units 2, 3, 4, 6, 8, 9, and 13:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$35,738,442	\$65,533,736
Special	\$ 8,851,388	\$16,260,094
Federal	\$ 7,013,552	\$11,893,857
Other	\$ 1,762,524	\$ 3,281,949

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in each respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining and belong to the same compensation plans as those officers and employees within collective bargaining units 2, 3, 4, 6, 8, 9, and 13:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$6,552,480	\$10,812,957
Special	\$1,681,073	\$ 2,730,280
Federal	\$ 607,195	\$ 950,093
Other	\$ 233,167	\$ 496,833

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in each respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to administrative director services (JUD 201) the following sums, or so much thereof as may be necessary, to fund all collective bargaining cost items in the arbitration award for collective bargaining units 2, 3, 4, 6, 8, 9, and 13:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$5,127,986	\$8,691,734
Special	\$ 94,050	\$ 168,317

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the chief justice in each respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There is appropriated or authorized from the source of funding indicated below to administrative director services (JUD 201) the following sums, or so much thereof as may be necessary, to fund salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees of the judiciary who are excluded from collective bargaining and belong to the same compensation plans as those officers and employees within collective bargaining units 2, 3, 4, 6, 8, 9, and 13:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$ 780,912	\$1,295,074

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the chief justice in each respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the source of funding indicated below to hospital care - Hawaii health systems corporation (HTH 210) the following sums, or so much thereof as may be necessary, to fund all collective bargaining cost items in the arbitration award for state employees in collective bargaining units 2, 3, 4, 6, 8, 9, and 13 assigned to the Hawaii health systems corporation:

<u>Fund</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
General	\$4,920,179	\$9,223,425

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation in each respective fiscal year for the purposes of this part.

PART VI

SECTION 11. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

ACT 261

SECTION 12. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 2002, and June 30, 2003, of the respective fiscal years, shall lapse as of those dates.

SECTION 13. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

ACT 261

H.B. NO. 11

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Education research and development revolving fund. (a) There is established, within the department of education, an education research and development revolving fund into which shall be deposited all revenues from the commercial exploitation of products and services developed by the department. The fund shall be used to support research and development of innovative curriculum, instructional aids, related technologies, and the related administrative costs of seeking and maintaining such commercialization. Appropriations or authorizations from the fund shall be expended by the superintendent.

(b) The department shall provide an annual report to the governor and the legislature describing all transactions and activities involved in the administration of the education research and development revolving fund.”

SECTION 2. There is appropriated out of the education research and development revolving fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003 to the department of education to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 262

H.B. NO. 94

A Bill for an Act Relating to Parent-Community Networking Center Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are four phases of development in a comprehensive parent-community networking center (PCNC) system of support for students, parents, and teachers. Phases I and II begin with the establishment of a PCNC at the school-building level. Part-time PCNC facilitators would offer parents, students, and others in the community many opportunities to relate with one another and heighten the awareness of each other's strengths and needs. These members of the community will learn from and support each other, creating an overall sense of school and community ohana that is especially conducive to learning. Phases III and IV of this process focus on strengthening each classroom unit as a learning community where teachers and parents form meaningful partnerships to ensure student well-being and achievement of performance standards.

Evaluative reports indicate that the one hundred sixty-five PCNCs funded at \$14,500 per school for phases I and II have:

- (1) Improved school-community relations;
- (2) Instilled positive attitude changes among teachers and parents; and
- (3) Increased the numbers of parents involved in the education of Hawaii's youth.

PCNCs have generated four times the amount of resources and services that have been spent on them, making PCNCs the most cost-effective program in the department of education.

However, funding for phases I and II of PCNCs is uneven across the state. In many schools, PCNC funding is minimal or absent. There are forty-five schools that receive only \$3,300 a year each, and forty-six schools have no funding at all. Therefore, the primary goal of this Act is to ensure that every public school (with the exception of Keanae in Maui and Niihau of Kauai District, which both have a very small student body), has at least \$14,500 for a PCNC program at the school-building level to fund an initial part-time school PCNC parent facilitator and equipment, a telephone, and supplies.

The legislature further finds that the more mature PCNCs must move into phases III and IV of development where teacher-parent partnerships are forged at the classroom level by the teacher and volunteer classroom parent. To establish a model of the process to implement phases III and IV, the state-level family support services PCNC office collaborated with the principal of Kapunahala elementary school to expand the PCNC staff in fiscal year 1997-98 with another part-time temporary teacher position (classroom parent coordinator/trainer) at the cost of \$12,200 per year. Satisfying teacher-parent partnerships at the classroom level while fostering a highly supportive sense of community at the school-building level has resulted in higher student achievement in each of the past three years as indicated by a three-year longitudinal report of student SAT scores.

The legislature also finds that there is overwhelming research evidence of the critical need for an integrated, comprehensive system of family support, parent education, teacher-parent partnerships, and volunteer and resource development at the neighborhood/school and classroom/family levels. Accordingly, the purpose of this Act is to appropriate funds to the department of education for the establishment of new PCNC sites and programs, and for the development of existing PCNC sites and programs.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003 for parent-community networking centers.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

ACT 263**H.B. NO. 161**

A Bill for an Act Relating to Criminal History Record Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to implement the recommendation of the legislative reference bureau's study for the creation of a representative working group to resolve policy issues raised in the bureau's study by conducting a comprehensive review and analysis of all issues related to the noncriminal justice access and use of criminal history record information for employment and licensing determinations and other related criminal history record check issues.

SECTION 2. (a) There is established within the department of the attorney general, for administrative purposes, a temporary criminal history record check working group to review policy issues concerning the noncriminal justice access and use of criminal history record information for employment and licensing purposes as raised in the legislative reference bureau study. The working group shall review existing laws governing access and use of criminal history record information, laws authorizing criminal history record checks for noncriminal justice purposes of employment and licensing, and other criminal history record check issues and make recommendations to the legislature.

(b) The working group shall be composed of members to be appointed by the attorney general and shall include but not be limited to participants representing or from the following agencies and groups:

- (1) Department of the attorney general;
- (2) Department of health;
- (3) Department of human services;
- (4) Department of commerce and consumer affairs;
- (5) Department of public safety;
- (6) Department of education;
- (7) Hawaii labor relations board;
- (8) Independent or private school association;
- (9) The Hawaii criminal justice data center;
- (10) The civil rights commission;
- (11) The civil service commission;
- (12) County licensing boards;
- (13) Public employee unions;
- (14) Public and private employers;
- (15) Department of human resources development;
- (16) Judiciary; and
- (17) Legislative reference bureau.

The working group shall be chaired by a representative from the department of the attorney general.

(c) The working group shall consider delineating the subject matter of criminal history records by replacing the statutory term “arrest and court record” with the broader term “nonconviction data”. The working group shall consider the most appropriate definition of this term as it applies to the subject matter of criminal history record checks. The working group shall consider policy issues applicable to access and use of criminal history record information, laws authorizing criminal history record checks, and other issues related to criminal history record checks for noncriminal justice purposes of employment and licensing. In formulating policy and law recommendations relating to access and use of criminal history record information to conduct criminal history record checks for noncriminal justice purposes of employment and licensing determinations, the working group shall balance the public’s need to know, employer liability, the reintegration of convicted offenders into society, and the record subject’s right to privacy.

The working group shall identify statutes, administrative rules, and practices related to access and use of criminal history information and criminal history record checks for noncriminal justice employment and licensing purposes and make recommendations for repeal and amendment of existing laws and adoption of new laws. Issues that the working group shall address include but are not limited to:

- (1) Should Hawaii employment practices law with respect to the use of criminal history record information also apply to licensing decisions? If there should be any differences, what should those differences be?
- (2) Are there any guidelines to determine when a conviction is “rationally related” to the job? If so, what are they?
- (3) When statutory authorization, or a Bona Fide Occupational Qualification (BFOQ) requirement, or both, allows consideration of arrest and court record:
 - (A) Is age of convictions that may be considered limited to convictions less than ten years old?
 - (B) Is there an age limit for arrests that may be considered?
 - (C) Are arrests required to be reasonably necessary to the operation of the business and substantially related to the job?
 - (D) Is a conditional offer of employment required before consideration of conviction data or nonconviction data, or both are allowed?
- (4) Does a criminal history record check that is authorized, but not required, by statute constitute a BFOQ exception that allows consideration of arrest and court records?
- (5) Should Hawaii employment practices law be amended to expressly authorize consideration of both conviction and nonconviction data when an employer is statutorily authorized to conduct a criminal history record check of an individual’s criminal history record information (which includes both conviction data and nonconviction data) to determine employment suitability? If so, what restrictions, if any, should be imposed on an employer’s consideration of criminal history record information?
- (6) Should section 378-3, Hawaii Revised Statutes, be amended to repeal paragraph (8) because it is unnecessary, duplicative, and potentially confusing?

Section 378-3, Hawaii Revised Statutes, establishes “Exceptions”, stating that nothing in chapter 378, part I, Hawaii Revised Statutes, “Discriminatory Practices”, shall be deemed to prohibit or prevent public or private schools from considering criminal convictions

in determining suitability for employment in close proximity to children. Sections 846-43 and 846-44, Hawaii Revised Statutes, independently authorize public and private schools to conduct criminal history record checks for employment screening and section 378-2.5, Hawaii Revised Statutes, allows consideration of convictions. Other statutes that authorize other agencies to conduct employment criminal history record checks are not included as "exceptions" in section 378-3. To include some but not all, statutorily authorized criminal checks in section 378-3 appears to be both unnecessary and confusing.

- (7) Although aggrieved civil service applicants may appeal to the civil service commission, the rights of a similarly aggrieved applicant for a state job that is not civil service are unclear. Should the civil rights commission investigate complaints (by persons other than those applying for state or county civil service jobs) related to the prohibitions in section 831-3.1, Hawaii Revised Statutes, on the State's use of certain criminal records in state employment decisions? If not the civil rights commission, then who?
- (8) Similarly, what remedies are (or should be) available for license applicants who believe their license was denied or revoked based on the State's use of nonconviction or conviction data?
- (9) Since the unlimited availability of Hawaii conviction data allows public access to convictions regardless of age, does this conflict with an employer's ability to consider only those rationally related convictions less than ten years old? If so, how should the conflict be reconciled?
- (10) Does the prohibition in 28 CFR section 20.21(b) continue to restrict states that received federal funding in connection with the collection, storage, dissemination of criminal history record information in the dissemination of state nonconviction data?
- (11) Consider repeal of section 831-3.1, Hawaii Revised Statutes, which restricts the State's use, distribution, and dissemination of certain criminal records in employment and licensing decisions to eliminate redundant, unnecessary, duplicative, or conflicting laws.

The State is subject to Hawaii law governing the dissemination and use of criminal history record information in employment decisions in the same manner as any other employer.

Clarification of the State's authority to access and use of criminal history record information for licensing purposes is recommended. Limitations identical to those limiting access and use in employment matters are suggested.

- (12) If section 831-3.1, Hawaii Revised Statutes, is retained, clarification of "noncriminal standards such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like" is recommended.

Various state departments are required to develop standards, which include criminal history record checks, to assure the "reputable and responsible character" of certain license or employment applicants. The mandatory use of criminal history record checks to assure "reputable and responsible character" in one statute and the prohibition against consideration of convictions when considering "good moral character" should be clarified and distinguished.

- (13) Whether the department of education and other youth-service organizations should be required to use the Hawaii sex offender website to investigate their volunteers, and if so, what should be the parameters of such use?

(d) The working group shall be fully designated and constituted by no later than thirty days after the effective date of this Act and shall convene on a regular basis. In conducting the review, the working group shall seek consensus and, where consensus is not possible, identify the competing viewpoints and goals with respect to the issue in question so that the legislature may be fully advised of the full range of policy choices presented.

(e) The working group shall submit a report of its findings and recommendations relating to access and use of criminal history record information to conduct criminal history record checks for noncriminal justice employment and licensing purposes to the legislature not less than twenty days before the convening of the regular session of 2003 which shall include proposed legislation and identification of resources necessary to support or enforce recommendations for new or amended law and policy.

(f) The department of the attorney general shall provide administrative support upon request from the working group.

(g) The legislative reference bureau shall provide technical assistance to the working group on legislative drafting and shall assist in drafting any legislation proposed by the working group.

(h) The working group shall cease to exist on June 30, 2003.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 2001.)

ACT 264

H.B. NO. 284

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that it is imperative that Hawaii's public school students receive adequate health care services. Currently, children in Hawaii's public schools who have varying degrees of health challenges are cared for by school health aides. Given the growing complexity of student health needs, the public school health aides may not be prepared to meet these complex health challenges. Therefore, it is the intent of the legislature to begin the process of reintroducing school health nurses into Hawaii's public schools.

Currently, there are thirty-six public school complexes throughout the State. These complexes include high schools, intermediate or middle schools, and elementary schools.

The purpose of this part is to appropriate funds to hire full-time registered nurses for Hawaii's public school complexes.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,290,356 or so much thereof as may be necessary for fiscal year 2001-2002 and \$1,250,000 or so much thereof as may be necessary for fiscal year 2002-2003 to hire full-time registered nurses within the department of health; provided that each registered nurse shall be assigned to a public school complex, except for one unassigned nurse who shall provide for vacation and sick leave coverage of the other registered nurses. These registered nurses shall also be

included as part of the department of education's comprehensive student support system.

The sums appropriated shall be expended by the department of health for the purposes of this part.

PART II

SECTION 2. There is appropriated out of the Hawaii organ and tissue education special fund, established by section 3 of Act 88, Session Laws of Hawaii 1999, the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to the Organ Donor Center of Hawaii. Any unexpended or unencumbered balance of this appropriation as of the close of business on June 30, 2002, and on June 30, 2003, respectively, shall lapse into the Hawaii organ and tissue education special fund.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

PART III

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

ACT 265

H.B. NO. 462

A Bill for an Act Relating to the Uniform Arbitration Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER UNIFORM ARBITRATION ACT

§ -1 Definitions. In this chapter:

“Arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

“Arbitrator” means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

“Court” means the circuit court of the appropriate judicial circuit in this State, unless otherwise indicated.

“Knowledge” means actual knowledge.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ **-2 Notice.** (a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ **-3 When chapter applies.** (a) Except as provided in subsection (c), this chapter governs an agreement to arbitrate made on or after the effective date of this chapter.

(b) This chapter governs an agreement to arbitrate made before the effective date of this chapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) After June 30, 2004, this chapter governs an agreement to arbitrate whenever made.

§ **-4 Effect of agreement to arbitrate; nonwaivable provisions.** (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement shall not:

- (1) Waive or agree to vary the effect of the requirements of section -5(a), -6(a), -8, -17(a), -17(b), -26, or -28;
- (2) Agree to unreasonably restrict the right under section -9 to notice of the initiation of an arbitration proceeding;
- (3) Agree to unreasonably restrict the right under section -12 to disclosure of any facts by a neutral arbitrator; or
- (4) Waive the right under section -16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding shall not waive, or the parties shall not vary the effect of, the requirements of this section or section -3(a) or (c), -7, -14, -18, -20(d) or (e), -22, -23, -24, -25(a) or (b), -29, -30, -31, or -32.

§ **-5 Application for judicial relief.** (a) Except as otherwise provided in section -28, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases.

§ **-6 Validity of agreement to arbitrate.** (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising

between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§ -7 Motion to compel or stay arbitration. (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it shall not, pursuant to subsection (a) or (b), order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section shall be made in that court. Otherwise a motion under this section shall be made in any court as provided in section -27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ -8 Provisional remedies. (a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b).

§ -9 Initiation of arbitration. (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under section -15(c) before the beginning of the arbitration hearing, by appearing at the hearing the person waives any objection to lack of or insufficiency of notice.

§ -10 Consolidation of separate arbitration proceedings. (a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

- (1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- (2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
- (3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
- (4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ -11 Appointment of arbitrator; service as a neutral arbitrator. (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§ -12 Disclosure by arbitrator. (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

- (1) A financial or personal interest in the outcome of the arbitration proceeding; and
- (2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section -23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under section -23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under section -23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section -23(a)(2).

§ -13 Action by majority. If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section -15(c).

§ -14 Immunity of arbitrator; competency to testify; attorney's fees and costs. (a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section -12 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection does not apply:

- (1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
- (2) To a hearing on a motion to vacate an award under section -23(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune

from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

§ -15 Arbitration process. (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

- (1) If all interested parties agree; or
- (2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section -11 to continue the proceeding and to resolve the controversy.

§ -16 Representation by lawyer. A party to an arbitration proceeding may be represented by a lawyer.

§ -17 Witnesses; subpoenas; depositions; discovery. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another State upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

§ -18 Judicial enforcement of pre-award ruling by arbitrator. If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section -19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section -22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section -23 or -24.

§ -19 Award. (a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ -20 Change of award by arbitrator. (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

- (1) Upon a ground stated in section -24(a)(1) or (3);
- (2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (3) To clarify the award.

(b) A motion under subsection (a) shall be made and notice given to all parties within twenty days after the movant receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within ten days after receipt of the notice in subsection (b).

(d) If a motion to the court is pending under section -22, -23, or -24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

- (1) Upon a ground stated in section -24(a)(1) or (3);
- (2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections -19(a), -22, -23, and -24.

§ -21 Remedies; fees and expenses of arbitration proceeding. (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section -22 or for vacating an award under section -23.

(d) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§ -22 Confirmation of award. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section -20 or -24 or is vacated pursuant to section -23.

§ -23 Vacating award. (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was:
 - (A) Evident partiality by an arbitrator appointed as a neutral arbitrator;
 - (B) Corruption by an arbitrator; or
 - (C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section -15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

- (4) An arbitrator exceeded the arbitrator's powers;
- (5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section -15(c) not later than the beginning of the arbitration hearing; or
- (6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section -9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within ninety days after the movant receives notice of the award pursuant to section -19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section -20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2), the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in section -19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§ -24 Modification or correction of award. (a) Upon motion made within ninety days after the movant receives notice of the award pursuant to section -19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section -20, the court shall modify or correct the award if:

- (1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
- (2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
- (3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§ -25 Judgment on award; attorney's fees and litigation expenses. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section -22, -23, or -24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the

award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ -26 **Jurisdiction.** (a) A court of this State having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

§ -27 **Venue.** A motion pursuant to section -5 shall be made in the court of the circuit in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the circuit in which it was held. Otherwise, the motion may be made in the court of any circuit in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any circuit in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

§ -28 **Appeals.** (a) An appeal may be taken from:

- (1) An order denying a motion to compel arbitration;
- (2) An order granting a motion to stay arbitration;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A final judgment entered pursuant to this chapter.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

§ -29 **Relationship to Electronic Signatures in Global and National Commerce Act.** The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.”

SECTION 2. Section 171-100, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The arbitration program shall:

- (1) Establish a panel of persons knowledgeable in matters of genealogy who will be available as arbitrators for the arbitration program;
- (2) Within one hundred twenty days of April 24, 1995, adopt written procedures under chapter 91 for the conduct of arbitrations under this section; provided that if no such written procedures are adopted within one hundred twenty days, the commercial arbitration rules of the American Arbitration Association shall apply to the extent not inconsistent with this section until such time as other written procedures are adopted; provided further[;] that any proceedings that are commenced under the commercial arbitration rules of the American Arbitration Association shall be completed under those rules;
- (3) Provide for notice of the arbitration proceeding in the same manner as required for a probate court determination of heirs;
- (4) Provide an opportunity for all persons claiming an interest in the subject nine hundred ninety-nine-year leasehold to participate;
- (5) Provide for binding arbitration if all participants who respond to a notice of arbitration indicate that they desire the arbitration to be

- binding. If any participant fails to indicate, or indicates that the participant desires nonbinding arbitration, the arbitration shall be nonbinding;
- (6) Apply section 171-99(e), to determine the legal interests of the participants in the subject nine hundred ninety-nine-year lease;
 - (7) Provide a written arbitration award setting forth the legal interests of the participants in the subject nine hundred ninety-nine-year lease; and
 - (8) Conduct arbitrations under and subject to ~~[the provisions of]~~ chapter [658-] ___, and subject to confirmation by the circuit court upon application of any participant in the arbitration pursuant to section [658-8.] ___-22.”

SECTION 3. Section 514A-125, Hawaii Revised Statutes, is amended to read as follows:

“**[F] §514A-125 [J] Award; confirming award.** The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award[;] pursuant to section -22, unless the award is vacated, modified, or corrected, as provided in sections [658-9 and 658-10;] -20, -23, and -24, or a trial de novo is demanded under section 514A-127, or the award is successfully appealed under section 514A-127. The record shall be filed with the motion to confirm award [as provided for in section 658-13], and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.”

SECTION 4. Sections 92-17(f), 171-6(9), 171-17(c) and (d), 182-3(b), 421H-6(a), 431:10C-213(c), 431:10C-213.5(d), 481I-4(f), 514A-121(a), 514A-127(e), 516-26, 516-66, 516-70(b), and 712A-16(1)(b)(iii), Hawaii Revised Statutes, are amended by substituting the designation of the new chapter added to the Hawaii Revised Statutes by section 1 of this Act wherever references to “chapter 658” appear, as the context requires.

SECTION 5. Chapter 658, Hawaii Revised Statutes, is repealed.

SECTION 6. This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect, except as subject to section -3 of the new chapter in section 1 of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2002.

(Approved June 22, 2001.)

ACT 266

H.B. NO. 1089

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Act 117, Session Laws of Hawaii (SLH) 1999, appropriated \$400,000 for fiscal year 1999-2000 for expenses incurred in the performance of the duties of the agribusiness development corporation board. Act 206, SLH 2000, amended Act 117 to extend the lapsing date of the appropriation to June 30, 2001, and to allow the agribusiness development corporation board to use \$250,000 of the moneys for the development of an agricultural subdivision in the Hamakua district on the island of Hawaii. The legislature finds that the funds designated for the planning, design, and construction of an agricultural subdivision in Hamakua have not been fully used.

The purpose of this part is to deposit any unexpended or unencumbered funds remaining from Act 117, as amended, at the close of fiscal year 2000-2001, into the Hawaii agricultural development revolving fund.

SECTION 2. Act 117, Session Laws of Hawaii 1999, as amended by Act 206, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

“SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the expenses incurred in the performance of the duties of the agribusiness development corporation board; provided that:

- (1) Any unexpended or unencumbered funds at the close of fiscal year 1999-2000 may be expended or encumbered during fiscal year 2000-2001, and ~~[shall not lapse until June 30, 2001; and]~~ any unexpended or unencumbered funds at the close of fiscal year 2000-2001 shall be deposited into the Hawaii agricultural development revolving fund; and
- (2) The agribusiness development corporation may use \$250,000 for grants for the development of an agricultural subdivision in the Hamakua district on the island of Hawaii.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.”

PART II

SECTION 3. There is appropriated the sum of \$5,000,000 out of the agricultural loan revolving fund and the sum of \$5,000,000 out of the aquaculture loan revolving fund, or so much thereof as may be necessary for fiscal year 2001-2002, and there is appropriated the sum of \$5,000,000 out of the agricultural loan revolving fund and the sum of \$5,000,000 out of the aquaculture loan revolving fund, or so much thereof as may be necessary for fiscal year 2002-2003, to provide financial assistance to agricultural and aquaculture enterprises on Kauai; provided that the aggregate total of the expenditures during fiscal year 2001-2002 and 2002-2003 out of these appropriations shall not exceed \$5,000,000.

The department of agriculture is authorized to transfer such sums as are necessary, in excess of the maximum account specified in section 155-14, Hawaii Revised Statutes, to facilitate this appropriation; provided that such transfer shall not exceed \$5,000,000.

The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

PART III

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2001; provided that part II of this Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

ACT 267

H.B. NO. 1556

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that agriculture in Hawaii is one of the fastest growing industries valued at \$2,900,000,000 and provides 5.6 per cent of the State's total employment. Recent changes in state farm programs have helped part-time farmers and immigrant farmers, and have increased production through value-added products that require processing and manufacturing. These changes are in keeping with the industry's transition from large plantation industries to smaller diversified agriculture farms.

The legislature also finds that the cost of farm ownership and related improvements as well as farm operations, while financially prohibitive at the onset, can be recovered as a farm business grows.

The purpose of this Act is to respond to the changing agricultural needs of Hawaii's farmers by raising the ceiling amounts for class A and class C agricultural loans.

SECTION 2. Section 155-9, Hawaii Revised Statutes, is amended:

1. By amending subsection (b) to read as follows:

“(b) Class A: Farm ownership and improvement loans shall provide for:

- (1) The purchase or improvement of farm land;
- (2) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings; and
- (3) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed [~~\$400,000~~] \$800,000 and for a term not to exceed forty years. To be eligible, the applicant shall (A) derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations; and (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate the applicant's farm.”

2. By amending subsection (d) to read as follows:

“(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farming operation, including:

- (1) The purchase of farm equipment and livestock;
- (2) The payment of production and marketing expenses including materials, labor, and services;

- (3) The payment of living expenses;
- (4) The liquidation of indebtedness incurred for any of the foregoing purposes; and
- (5) The exportation of crops and livestock.

The loans shall be for an amount not to exceed [~~\$400,000~~] \$800,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations.

Qualified farmers affected by state eradication programs may also be eligible for loans under this subsection. Loans made for rehabilitation from eradication programs shall be subject to the terms of class "C" loans; provided that the interest rate shall be three per cent a year and the requirements in section 155-3 shall be waived and paragraph (4) shall not apply."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 22, 2001.)

ACT 268

S.B. NO. 41

A Bill for an Act Relating to Conservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 193, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . YOUTH CONSERVATION CORPS

§193- Authorization. The governor is authorized to avail the State of the benefits of any law or laws of the United States, now existing or to be enacted, such as title 16 United States Code, sections 1701 to 1706, or any other law or laws of similar purport.

§193- Administration. To carry out the program authorized by this part, the governor may:

- (1) Enter into an agreement or agreements, or designate the department of land and natural resources, or any other state department or departments as the state agency or agencies to enter into an agreement or agreements, with the proper authorities of the United States;
- (2) Designate the department of land and natural resources, or any state department or departments to design programs to provide healthful outdoor training and employment for young persons and to advance the conservation, development, and management of natural resources and recreational areas, in accordance with the applicable federal law; provided that the designated department or departments may also adopt appropriate rules under chapter 91 to carry out the programs so designed; and
- (3) Defray one-half of all costs incurred with respect to the programs or any other proportion of the costs of the programs, which may be

required by the applicable laws of the United States, out of any moneys appropriated to the department or departments designated to participate in the programs, without regard to the original purpose of the appropriations.

§193- Personnel laws; applicability. The provisions of chapters 76 to 80, and 88, except provisions of state law relating to the application of the Social Security Act of the United States to the extent that the Act shall be applicable under the federal law establishing the youth programs, shall not apply to persons employed under this part.”

SECTION 2. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

“§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year, twenty-five per cent shall be paid into the rental housing trust fund established by section 201G-432 and twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources after joint consultation with the forest stewardship committee and the natural area reserves system commission in the following priority:

- (1) To natural area partnership and forest stewardship programs; [and]
- (2) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners[-]; and
- (3) The youth conservation corps established under chapter 193.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 22, 2001.)

ACT 269

S.B. NO. 606

A Bill for an Act Relating to Recycled Water.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342D- Recycled water use. All state and county facilities using potable water irrigation systems may connect to available recycled water service.”

SECTION 2. Section 342D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Available recycled water service” means the existence of an operable recycled water distribution main within one hundred feet of the property line.”

SECTION 3. Section 342D-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director may make grants to any county or state agency for the construction of necessary wastewater treatment works and for other projects intended for [~~wastewater reclamation~~] recycled water or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters.”

SECTION 4. Section 342D-55, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director may require the owner or operator of any effluent source, works, system, or plant; any discharger of effluent; the applicant for written authorization under this chapter for such sources or facilities; or any person engaged in management practices to:

- (1) Establish and maintain records;
- (2) Make reports and plans that shall cover existing situations and proposed additions, modifications, and alterations;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent, state waters, [~~and~~] sewage sludge[;], and recycled water; and
- (5) Provide such other information as the department may require.”

SECTION 5. Section 342D-81, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-81]]~~ **Declaration of policy.** The State’s policy is to promote water pollution prevention and control, including the use of recycled water, by financing county and state agency eligible projects consistent with applicable federal and state laws. The State intends such financing to occur through a revolving fund loan program that makes loans to counties and state agencies at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a coordinated manner that does not cause the state debt ceiling to be exceeded.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 22, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 270

S.B. NO. 992

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“28- Cigarette tax stamp enforcement special fund. (a) There is established in the state treasury the cigarette tax stamp enforcement special fund, into which shall be deposited the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26 and fines as provided for by section 245-41.

(b) Moneys in the cigarette tax stamp enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (2) Chapter 245; and
- (3) Any other requirement deemed necessary to carry out the purposes of chapter 245.

§28- Tobacco enforcement special fund. (a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a).

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs; and
- (4) Any other requirement deemed necessary to carry out the purposes of the fund.

(c) All unencumbered and unexpended moneys in excess of \$350,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the Hawaii tobacco settlement special fund.

(d) The department of the attorney general shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, providing an accounting of the receipts and expenditures of the fund.”

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“245- Cigarette tax stamp administrative special fund. (a) There is established in the state treasury the cigarette tax stamp administrative special fund, into which shall be deposited the allocated portion of the stamp fee designated to pay for the cost to the State of providing the stamps as provided by section 245-26.

(b) Moneys in the cigarette tax stamp administrative special fund shall be administered by the department of taxation and shall be used:

- (1) To provide the stamps and administer the cigarette tax stamp provisions as provided in chapter 245; and
- (2) For any other requirements deemed necessary to carry out the purposes of chapter 245.”

SECTION 3. Section 245-1, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

““Armed services of the United States” for purposes of this chapter shall include the Department of Defense, United States Army, Navy, Air Force, Marines, Department of Transportation in the case of Coast Guard facilities, or Coast Guard, and their respective reserve, National Guard, and auxiliaries.

“Distribute” means to sell, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

“Entity” means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

“Intentionally” for purposes of this chapter shall have the same meaning as in section 702-206.

“Knowingly” for purposes of this chapter shall have the same meaning as in section 702-206.

“Possession” means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, either directly or through another entity.

“Recklessly” for purposes of this chapter shall have the same meaning as in section 702-206.

“Use” means the exercise of any right or power incident to ownership or possession, other than the sale, or the keeping or retention for the purpose of sale.”

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649; [and]
- (27) High technology special fund under section 206M-15.5;

- (28) Cigarette tax stamp enforcement special fund established by section 28-
—;
- (29) Cigarette tax stamp administrative special fund established by section
245-
—; and
- (30) Tobacco enforcement special fund established by section 28-
—;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special summer school and intersession fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Domestic violence prevention special fund under section 321-1.3;
 - (9) Spouse and child abuse special account under section 346-7.5;
 - (10) Spouse and child abuse special account under section 601-3.6;
 - (11) Funds of the employees’ retirement system created by section 88-109;
 - (12) Unemployment compensation fund established under section 383-121;
 - (13) Hawaii hurricane relief fund established under chapter 431P;
 - (14) Convention center capital and operations special fund established under section 206X-10.5;
 - (15) Hawaii health systems corporation special funds;
 - (16) Tourism special fund established under section 201B-11;
 - (17) Compliance resolution fund established under section 26-9;
 - (18) Universal service fund established under chapter 269;
 - (19) Integrated tax information management systems special fund[;] under section 231-3.2;
 - (20) Insurance regulation fund under section 431:2-215;
 - (21) Hawaii tobacco settlement special fund under section 328L-2;
 - (22) Emergency and budget reserve fund under section 328L-3;
 - (23) Probation services special fund under section 706-649; [and]
 - (24) High technology special fund under section 206M-15.5;
 - (25) Cigarette tax stamp enforcement special fund established by section 28-
—;
 - (26) Cigarette tax stamp administrative special fund established by section
245-
—; and
 - (27) Tobacco enforcement special fund established by section 28-
—;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 6. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

“§245-15 Disposition of revenues. All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law~~[-, except for the amounts designated by section 245-41 for distribution to the attorney general].~~”

SECTION 7. Section 245-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

- (1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps~~[-]; with such amount to be deposited to the credit of the department of taxation’s cigarette tax stamp administrative special fund; and~~
- (2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax~~[-]; with such amount to be deposited to the credit of the department of the attorney general’s cigarette tax stamp enforcement special fund;~~

provided that the department of taxation by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.”

SECTION 8. Section 245-22, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~245-22~~] Affixation; required prior to distribution; method and manner.~~ (a) Beginning January 1, 2001, a licensee or the authorized agent or designee of a licensee shall affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) Beginning April 1, 2001, no individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this section.

(c) Beginning April 1, 2001, no cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under subsection (a).

(d) The department shall adopt rules describing the method and manner in which stamps are to be affixed to packages of cigarettes.

(e) For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes prior to distribution, each licensee or authorized agent or a designee of a licensee purchasing stamps from the department may purchase the stamps at a reduction of 0.4 per cent of the denominated value of each stamp purchased. The reduction shall be the only discount allowed to purchasers from the department. If a purchaser does not comply with all of the provisions of title 14, the licensee shall pay the full denominated value of the stamps purchased until the licensee has complied. The department may increase or decrease the 0.4 per cent reduction by rule under chapter 91.”

SECTION 9. Section 245-39, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~245-39~~] Penalty exemptions[-]; presumptions.~~ (a) Sections 245-37 and 245-38 shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(b) [Sections 245-37 and 245-38 shall not apply to the resale of tax-exempt cigarettes that were purchased from sales outlets operated under the regulations of the Armed Services of the United States.] No cigarette tax stamp shall be required to be paid upon cigarettes that are sold for personal use at sales outlets operated under the regulations of the armed services of the United States; provided that it shall be unlawful for any person, including members of the armed services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who intentionally, knowingly, or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales outlets operated under the regulations of the armed services of the United States shall be guilty of a violation of this chapter, and punishable as provided in section 245-37 or 245-38. For purposes of this subsection, "person" means one or more people, a company, corporation, a partnership, or any combination of individuals.

(c) Unless otherwise exempt from taxes by this chapter, it shall be presumed that all cigarettes are subject to the tax imposed by this chapter, unless the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them."

SECTION 10. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general[;] to be deposited to the credit of the department of the attorney general's cigarette tax stamp enforcement special fund; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney."

SECTION 11. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund[;];

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing the difference between the first \$350,000 of such moneys and the unexpended and unencumbered balance of the tobacco enforcement special fund at the close of the previous fiscal year shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department."

SECTION 12. Section 486P-2, Hawaii Revised Statutes, is amended to read as follows:

"[E]§486P-2[E] Reports to attorney general. (a) Except as provided in subsection (b), any tobacco product manufacturer selling cigarettes to consumers within this State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) shall file a report with the attorney general setting forth:

- (1) Its name and trade name (if any);
- (2) The address of its principal place of business;

- (3) A memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar quarter into this State; and
- (4) Other information as may be required by the attorney general.

The memorandum or copy of the invoice shall include the name and address of the person to whom the shipment was made, the brand, and the quantity of cigarettes shipped. The attorney general may prescribe the format the report shall take. The report shall be filed with the attorney general not later than the thirtieth day of each calendar quarter covering the previous calendar quarter.

(b) In lieu of the reports required to be provided in subsection (a), any tobacco product manufacturer that is a signatory to the Master Settlement Agreement, as defined in section 675-2, and whose cigarettes are sold to consumers within this State (whether directly by the manufacturer or through a distributor, retailer, or similar intermediary or intermediaries), may file with the attorney general copies of reports that the tobacco product manufacturer submits to the department of taxation regarding its sales activities in this State.

(c) Information provided to the attorney general pursuant to this section that tends to identify customers of tobacco product manufacturers, terms of sale (including price), and non-aggregated sales volume data shall be exempt from disclosure under section 92F-11.

(d) Notwithstanding any law to the contrary, the department of taxation shall provide to the attorney general any information necessary for the proper administration and enforcement of this chapter and chapter 675, including: access to inspect, examine, and use the tax returns and records that are required to be filed pursuant to this chapter, chapter 245, chapter 675, or title 15 United States Code section 376 by any entity engaged in the business of manufacturing, wholesaling, distributing, or dealing in cigarettes or tobacco products on file with the department of taxation. For purposes of this chapter "entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

(e) Any entity that is required to file a return or report pursuant to this chapter, chapter 245, chapter 675, or title 15 United States Code section 376 shall also provide any information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675."

SECTION 13. Section 486P-3, Hawaii Revised Statutes, is amended to read as follows:

“[[§486P-3]] Penalties. (a) The attorney general may bring a civil action against any ~~[tobacco product manufacturer]~~ entity that fails to file the reports required under this chapter.

(b) The attorney general may bring a civil action against any entity engaged in the business of manufacturing, wholesaling, distributing, or dealing in cigarettes or tobacco products who fails to provide the information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675.

(c) The State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of this chapter."

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be deposited into the cigarette tax stamp enforcement special fund created in section 1 of this Act.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 15. There is appropriated out of the cigarette tax stamp enforcement special fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the attorney general to further cigarette tax stamp enforcement.

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be deposited into the cigarette tax stamp administrative special fund created in section 2 of this Act.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 17. There is appropriated out of cigarette tax stamp administrative special fund the sum of \$120,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the department of taxation to continue to administer the cigarette tax stamp program.

The sums appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 18. There is appropriated out of the tobacco enforcement special fund the sum of \$350,000, or so much thereof as may be necessary, for fiscal year 2001-2002 and the sum of \$350,000, or so much thereof as may be necessary, for fiscal year 2002-2003 to carry out the purposes of the tobacco enforcement special fund. The sums appropriated shall be expended by the department of the attorney general.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 20. This Act shall take effect upon approval; provided that section 8 shall take effect on September 1, 2001, sections 14 to 18 shall take effect on July 1, 2001 and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act, shall not be repealed when that section is reenacted on July 31, 2003, by section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 22, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 271

H.B. NO. 77

A Bill for an Act Relating to the Women in Military Service for America Memorial.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The words “duty”, “honor”, and “pride”, reflect the spirit of generations of Americans who have sought to defend the rights and freedom of others. At the Women In Military Service For America Memorial, these words come to life in the stories and memories of the nearly two million women who have served

to defend our nation. The Women In Military Service For America Memorial Foundation, Incorporated, a nonprofit organization established to build the memorial, continues to raise the funds needed to operate and maintain the Memorial Education Center. The Foundation broke ground on June 22, 1995, for the only major national memorial in our nation's history to honor and pay tribute to all servicewomen of the United States armed forces—past, present, and future. The Women's Memorial was dedicated on October 18, 1997, and officially opened to the public on October 20, 1997.

The history of women in the armed forces began more than two hundred twenty years ago during the American Revolution and continues through the present. The Women's Memorial honors all the women who have served courageously, selflessly, and with dedication in times of conflict and in times of peace—women whose achievements have for too long been unrecognized or ignored.

The Women's Memorial was authorized by Congress and is supported by the United States Departments of Defense, Transportation, and Veterans Affairs. Legislation passed in 1986 stated that the Memorial had to be built with nonfederal funds. With the exception of federal grants to restore the existing structure and to complete the Memorial, the Memorial has been financed solely through private donations. Thus far, notable donors include foreign governments, forty-nine state governments, all except Hawaii, leading corporations, veterans organizations, a number of foundations, and individuals. Proceeds from the sale of a commemorative coin are a continuing resource.

The Foundation has a National Tribute Committee whose members include current and former members of Congress, governors, corporate leaders, and government and civic leaders. Active support for the Memorial is also demonstrated by the prestigious National Sponsors Committee, made up of all living former presidents and secretaries of defense. State chairs have been appointed in key states to lead the effort to locate, register, and honor servicewomen and women veterans throughout the nation. State chairs work in coordination with the Foundation's volunteer force of field representatives, which number approximately eighteen hundred.

Freedom is not free, nor should it ever be taken for granted. It has been, and must continue to be, defended vigorously through constant vigilance and personal sacrifice. The Women's Memorial preserves an important legacy for all generations by capturing the undocumented history of our American servicewomen. It is a place of remembrance for the loved and lost, and a place of honor for those who served in the past, those who serve today, and those who will serve in the future.

The purpose of this Act is to appropriate funds to the department of defense to enable the State of Hawaii to make a long overdue donation on behalf of the Women in Military Service for America Memorial in Arlington National Cemetery.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,800 or so much thereof as may be necessary for fiscal year 2001-2002 to enable the State of Hawaii to make a donation on behalf of the Women in Military Service for America Memorial in Arlington National Cemetery.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

A Bill for an Act Relating to Renewable Energy Resources.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. RENEWABLES PORTFOLIO STANDARD

SECTION 1. It is the intent of the legislature to recognize the economic, environmental, and fuel diversity benefits of renewable energy resources and to encourage the establishment of a market for renewable energy in Hawaii using the State's renewable energy resources and to encourage the further development of those resources. The legislature finds that while Hawaii is a national leader in the development of renewable energy resources for electricity production, there may be more that the State can do to encourage the development and implementation of renewable energy. These efforts can reduce the amount of imported oil used for the generation of electricity.

Accordingly, the legislature finds that it should establish goals for electric utilities to guide them in incorporating renewable resources into their resource portfolios to reduce the use of imported oil.

The purpose of this Act is to lessen Hawaii's dependence on imported oil by encouraging the greater use of renewable energy by:

- (1) Establishing goals for electric utility companies in implementing renewable portfolio standards by including a minimum percentage of renewable energy resources within an overall resource portfolio; and
- (2) Enabling qualified customer-generators to utilize net energy metering and allow for monthly billing.

SECTION 2. For the purposes of this Act:

"Electric utility company," means a public utility as defined under section 269-1, Hawaii Revised Statutes, for the production, conveyance, transmission, delivery, or furnishing of power.

"Renewable energy" means electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, wave energy, biomass including municipal solid waste, biofuels or fuels derived entirely from organic sources, hydrogen fuels derived entirely from renewable energy, or fuel cells where the fuel is derived entirely from renewable sources. "Renewable energy" also means electrical energy savings brought about by the use of solar and heat pump water heating.

"Renewable portfolio standard" means the percentage of electrical energy sales that is represented by renewable energy.

SECTION 3. Renewable portfolio standards. Each electric utility company that sells electricity for consumption in the State shall establish a renewables portfolio standard goal of:

- (1) Seven per cent of its net electricity sales by December 31, 2003;
- (2) Eight per cent of its net electricity sales by December 31, 2005; and
- (3) Nine per cent of its net electricity sales by December 31, 2010.

SECTION 4. An electric utility company and its electric utility affiliates may aggregate their renewable portfolios in order to achieve the renewable portfolio standard.

SECTION 5. Any electric utility company not meeting the renewable portfolio standard shall report to the public utilities commission within ninety days following the goal dates established in section 3 of this Act, and provide an explanation for not meeting the renewable portfolio standard. The public utilities commission shall have the option to either grant a waiver from the renewable portfolio standard or an extension for meeting the prescribed standard.

The public utilities commission may provide incentives to encourage electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both.

PART II. NET ENERGY METERING

SECTION 6. Chapter 269, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . NET ENERGY METERING

§269-A Definitions. As used in this part:

“Eligible customer-generator” means a metered residential or commercial customer of an electric utility who owns and operates a solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, with a capacity of not more than ten kilowatts, that is:

- (1) Located on the customer’s premises;
- (2) Operated in parallel with the utility’s transmission and distribution facilities;
- (3) In conformance with the utility’s interconnection requirements; and
- (4) Intended primarily to offset part or all of the customer’s own electrical requirements.

“Net energy metering” means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period; provided that:

- (1) Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions;
- (2) An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric utility, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator, or to collect solar, wind turbine, biomass, or hydroelectric energy generating system performance information for research purposes;
- (3) If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the electric utility shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions;
- (4) If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter; and
- (5) An eligible customer-generator who already owns an existing solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, is eligible to receive net energy metering service in accordance with this part.

§269-B Standard contract or tariff; rate structure. (a) Every electric utility shall develop a standard contract or tariff providing for net energy metering, and shall make this contract available to eligible customer-generators, upon request,

on a first-come-first-served basis until the time that the total rated generating capacity produced by eligible customer-generators equals .5 per cent of the electric utility's system peak demand.

(b) Each net energy metering contract or tariff shall be identical, with respect to rate structure, to the contract or tariff to which the same customer would be assigned if the customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the eligible customer-generator's net kilowatt-hour consumption over a monthly billing period. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

§269-C Generating capacity. On an annual basis, beginning in 2003, every electric utility shall make available to the public utilities commission information on the total rated generating capacity produced by eligible customer-generators that are customers of that utility in the utility's service area. The public utilities commission shall develop a process for making the information required by this section available to electric utilities, and for using that information to determine when, pursuant to section 269-D, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area.

§269-D Additional customer-generators. Notwithstanding section 269-B, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak generating capacity of all eligible customer-generators served by all the electric utilities in that service area furnishing net energy metering to eligible customer-generators equals .5 per cent of the system peak demand of those electric utilities.

§269-E Calculation. The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electric grid over a monthly billing period.

§269-F Billing periods. Billing of net metering customers shall be only on a monthly basis.

§269-G Net electricity consumers. At the end of each monthly billing period, where the electricity supplied during the period by the electric utility exceeds the electricity generated by the eligible customer-generator during that same period, the eligible customer-generator is a net electricity consumer and the electric utility shall be owed compensation for the eligible customer-generator's net kilowatt-hour consumption over that same period. The compensation owed for the eligible customer-generator's net monthly kilowatt-hour consumption shall be calculated at the retail rate of the rate class the customer is normally assigned to.

§269-H Net electricity producers. At the end of each monthly billing period, where the electricity generated by the eligible customer-generator during the month exceeds the electricity supplied by the electric utility during that same period, the eligible customer-generator is a net electricity producer and the electric utility shall retain any excess kilowatt-hours generated during the prior monthly billing period. The eligible customer-generator shall not be owed any compensation for those excess kilowatt-hours unless the electric utility enters into a purchase agreement with the eligible customer-generator for those excess kilowatt-hours.

§269-I Net electricity consumption or production information. The electric utility shall provide every eligible customer-generator with net electricity consumption or production information with each regular monthly bill, which shall include the current monetary balance owed the electric utility for net electricity consumed or net electricity produced since the end of the last monthly billing period.

§269-J Termination by eligible customer-generators. If an eligible customer-generator terminates the customer relationship with the electric utility, the electric utility shall reconcile the eligible customer-generator's consumption and production of electricity during any part of a monthly billing period following the last reconciliation, according to the requirements set forth in this part.

§269-K Safety and performance standards. A solar, wind turbine, biomass, or hydroelectric energy generating system, or a hybrid system consisting of two or more of these facilities, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability. An eligible customer-generator whose solar, wind turbine, biomass, or hydroelectric energy generating system, or whose hybrid system consisting of two or more of these facilities, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance."

SECTION 7. Section 269-1, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition of "eligible customer-generator".

[~~"Eligible customer-generator" means a metered residential customer of an electric utility who owns and operates a solar, wind, or micro-hydro electric energy generating facility with a capacity of not more than ten kilowatts, that is located on the customer's premises, operates in parallel with the utility's transmission and distribution facilities, is in conformance with the utility's interconnection requirements, and is intended primarily to offset part or all of the customer's own electrical requirements."~~]

2. By deleting the definitions of "incremental cost of alternative electric energy", and "net energy metering".

[~~"Incremental cost of alternative electric energy" means, with respect to electric energy purchased from an eligible customer-generator, the cost to the utility of the electric energy that, but for the purchase from the eligible customer-generator, the utility would generate or purchase from another non-firm source.~~

~~"Net energy metering" means using a non-time-differentiated meter to measure the electricity supplied by a utility and another non-time-differentiated meter to measure the electricity generated by an eligible customer-generator and fed back to the utility over an entire billing period."~~]

SECTION 8. Section 269-16.21, Hawaii Revised Statutes, is repealed.

PART III.

SECTION 9. In codifying the new sections added by section 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved June 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 273

H.B. NO. 632

A Bill for an Act Relating to Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HOME AND COMMUNITY-BASED
CASE MANAGEMENT AGENCIES AND
COMMUNITY CARE FOSTER FAMILY HOMES**

§346-A Definitions. As used in this part:

“Certificate of approval” means the certificate issued by a home and community-based case management agency, that authorizes a person, agency, or organization to operate a community care foster family home.

“Community care foster family home” means a home that, for the purposes of this part:

- (1) Pursuant to section 346-B(a)(1), as applicable to the case management agency demonstration project in any county having a population of 500,000 or more persons:
 - (A) Is regulated by the department of human services in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
 - (B) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and
 - (C) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health; or
- (2) Pursuant to section 346-B(a)(2), as applicable to the case management agency demonstration project in any county having a population of less than 500,000 persons:
 - (A) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and
 - (B) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health.

“Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files;
- (2) Further analysis and search for other information available for individuals found in the Federal Bureau of Investigation criminal history record files;
- (3) Subsequent fingerprint analyses for required individuals; and
- (4) A name inquiry into the state criminal history record files.

"Department" means the department of human services.

"Expanded adult residential care home" means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate or skilled nursing facility.

"Home and community-based case management agency" means an agency licensed by the department to locate, coordinate, and monitor comprehensive services to meet the needs of medicaid recipients and other adults whom the agency places in a community care foster family home or an expanded adult residential care home.

"License" means an approval issued by the department for an agency to operate as a home and community-based case management agency.

§346-B Applicability. (a) Prior to June 30, 2003, this part shall apply equally to two distinct demonstration projects, except as provided in subsection (b), as follows:

- (1) In any county having a population of 500,000 persons or more; and
- (2) In any county having a population of less than 500,000 persons.

(b) Each demonstration project implemented under this part shall operate under its own distinct definition of "community care foster family home," as provided in section 346-A. In addition, for the demonstration project under subsection (a)(1), foster homes shall be required to reserve at least one bed for medicaid patients.

§346-C Home and community-based case management agency, authority over and evaluation of. (a) The home and community-based case management agency shall be responsible for certifying community care foster family homes. No person, agency, or organization shall engage in locating, coordinating, or monitoring comprehensive services to individuals in community care foster family homes and in issuing certificates of approval to community care foster family homes, unless it meets the standards of conditions, management, and competence set by the department and is issued a license for this purpose by the department.

(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of home and community-based case management agencies;
- (2) Standards of conditions, management, and competence of home and community-based case management agencies;
- (3) Procedures for obtaining and renewing a license from the department;
- (4) Minimum standards of conditions and competence for the operation of community care foster family homes that are to be used by home and community-based case management agencies as certification requirements of community care foster family homes; and
- (5) Minimum grievance procedures for certified community care foster family homes and recipients of case management services.

(c) As a condition for obtaining a license, a person, agency, or organization shall meet the requirements set forth in subsection (b)(1), (2), and (3), and satisfy the criminal history check requirements under section 346-E. The department may deny a license if:

(1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; or

(2) If the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well being of adults receiving care in community care foster family homes.

(d) Upon approval of any home and community-based case management agency, the department or its authorized agents shall issue a license, which shall continue in force for one year or for two years unless sooner revoked for cause. The department or its authorized agents shall renew the license only if after an annual or biennial evaluation, the agency continues to meet the standards established by the department.

(e) The department shall evaluate the home and community-based case management agency to determine compliance with the requirements established under this section:

- (1) Annually or biennially; or
- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.

(f) The department may suspend or revoke a license if the department deems that the agency is unwilling or unable to comply with the rules adopted under this section; provided that:

- (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify those community care foster family homes it certified;
- (2) An agency whose license has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and able to comply with the rules adopted under this section; and
- (4) A revoked license shall be restored only after a new application is made and reviewed under this part.

(g) Any home and community-based case management agency shall be subject to investigation by the department at any time and in the manner, place, and form as provided in the department's rules.

(h) The department shall adopt standard forms of contract that the home and community-based case management agency shall use with each of its clients, community care foster family homes, and expanded adult residential care homes.

(i) The department shall establish a review board consisting of three operators of community care foster family homes and three operators of expanded adult residential care homes. The review board shall monitor referrals and placements of clients by each home and community-based case management agency on a monthly basis. Each home and community-based case management agency shall be required to provide monthly reports to the review board.

(j) The home and community-based case management agency shall have a fiduciary duty to each medicaid recipient and other adult it places in a community care foster family home or expanded adult residential care home.

§346-D Community care foster family home, authority over and evaluation of. (a) No person in any household shall take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four-hour living accommodations, including personal care and homemaker services, unless

the household meets the required standards established for certification and obtains a certificate of approval from a home and community-based case management agency.

(b) Home and community-based case management agencies shall issue certificates of approval based on compliance with the standards required for certification, pursuant to section 346-C(b)(4), and any additional requirements established by the agencies and agreed upon by the homes.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with requirements set forth in section 346-C(b)(4) and satisfy the criminal history record check requirements under section 346-E. The certifying agency may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine \$50 or less; or
- (2) If the certifying agency finds that the criminal history record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well being of adults in care.

(d) Upon approval of a community care foster family home, the home and community-based case management agency shall issue a certificate of approval that shall continue in force for one year unless sooner suspended or revoked for cause; provided that:

- (1) The agency may suspend or revoke a certificate of approval if the agency deems that a community care foster family home is unwilling or unable to comply with the rules adopted under section 346-C(b)(4). The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the certifying agency through its established appeal process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked certificate of approval may be reinstated if the certifying agency deems that the home is willing and able to comply with the rules adopted under section 346-C(b)(4);
- (4) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the agency and approved; and
- (5) The home and community-based case management agency shall renew the certificate of approval only if, after an annual evaluation, the home continues to meet the standards required for certification.

(e) Any community care foster family home shall be subject to investigation by the department and home and community-based case management agencies at any time and in the manner, place, and form as provided in procedures to be established by the department and home and community-based case management agencies.

§346-E Criminal history record checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter, which shall include but not be limited to criminal history record checks.

(b) An applicant for a home and community-based case management agency license shall submit statements signed under penalty of perjury by the operators, employees, and new employees of the home and community-based case management agency, indicating whether the operators, employees, or new employees have

ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, and the details thereof.

The operators, employees, and new employees shall also provide consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the home and community-based case management agency shall be fingerprinted for the purpose of complying with the criminal history record check. New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of home and community-based case management agencies subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

The department shall make a name inquiry into the criminal history records for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

(c) An applicant for a certificate of approval as a community care foster family home shall submit to the home and community-based case management agency, statements signed under penalty of perjury by the operators and other adults residing in the home, except for adults receiving care, indicating whether they have been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less. The operators and other adults residing in the home, except for adults receiving care, shall also provide consent to the certifying agency to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and other adults residing in the home, except for adults receiving care, shall be fingerprinted for the purpose of complying with the criminal history record check.

The certifying agency shall obtain criminal history record information through the Hawaii criminal justice data center on all operators and other adults residing in the community care foster family home, except for adults receiving care, subject to certification pursuant to this section. The Hawaii criminal justice data center may assess the operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

The certifying agency shall make a name inquiry into the criminal history records for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.

§346-F Penalty. Any person violating this part or any rule made pursuant to this part shall be fined not more than \$500."

SECTION 2. No later than twenty days before the convening of the regular session of 2002 and 2003, respectively, the department of human services shall report interim and final findings and recommendations regarding the effectiveness of the new part added to chapter 346, Hawaii Revised Statutes, by section 1 of this Act, as reflected by the status of the two demonstration projects, including comparative findings of the success of the two levels of regulation, and whether that part should be extended to the entire State. The report shall measure performance in the

following areas: vacancy rates, placement processes, pricing of private pays, costs to the State for placement and administration, consumer complaints, and negative clinical outcomes.

The following agencies and entities shall assist in evaluation of the two demonstration projects: home operators associations, case management agency associations, the department of human services, and department of health. The report shall also address the need and feasibility of a single entry point system for intermediate care facility and skilled nursing facility patients in community care settings.

SECTION 3. As part of the demonstration project in any county having a population of 500,000 or more persons, the department of human services, in consultation with the department of health, shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to regulate community care foster family homes that are equitable in relation to rules that govern expanded adult residential care homes.

SECTION 4. There is appropriated out of the criminal history record improvement revolving fund the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2002-2003 to effectuate the purposes of this Act.

The sums appropriated shall be expended by the department of the attorney general.

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect on July 1, 2001, and shall be repealed on June 30, 2003.

(Approved June 25, 2001.)

ACT 274

H.B. NO. 840

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Data collection relating to the well-being of Hawaii’s children and families. (a) The Hawaii performance partnerships board with the assistance of the center on the family at the University of Hawaii at Manoa, shall establish key indicators and data sets relevant to the health, education, and socioeconomic well-being of Hawaii’s children and families.

(b) The Hawaii performance partnerships board may request and shall receive from every department, division, board, bureau, commission, or other agency of the State and its political subdivisions, cooperation and assistance in the performance of its duties relating to results and performance accountability, decision-making, and budgeting.”

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the Hawaii performance partnerships board to establish key indicators and data sets relevant to the health, education, and socioeconomic well-being of Hawaii's children and families.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 275

H.B. NO. 1216

A Bill for an Act Relating to the Korean Centennial Celebration Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 231, Session Laws of Hawaii 2000, established a fifteen-member temporary commission, known as the Korean centennial celebration commission, to plan for the centennial anniversary of the arrival of the Korean people to Hawaii.

The purpose of this Act is to appropriate funds to the Korean centennial celebration commission in preparation for its celebration in 2003.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the Korean centennial celebration; provided that no funds shall be released unless matched on a dollar-for-dollar basis by private contributions.

The sum appropriated shall be expended by the Korean centennial celebration commission for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

ACT 276

H.B. NO. 1679

A Bill for an Act Relating to Dillingham Airfield.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§261- Kawaihapai airfield. The official name of the airfield located at Kawaihapai, formerly known as Dillingham airfield, shall be Kawaihapai airfield.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon the completion of the transfer of the airfield back to the State by the United States Army.

(Approved June 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 277

S.B. NO. 97

A Bill for an Act Relating to Telemarketing Fraud.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Telemarketing fraud. (1) A person commits the offense of telemarketing fraud if, with intent to defraud or misrepresent, that person obtains or attempts to obtain the transfer of possession, control, or ownership of the property of another through communications conducted at least in part by telephone and involving direct or implied claims that the person contacted:

- (a) Will or is about to receive anything of value; or
- (b) May be able to recover any losses suffered by the person contacted in connection with a prize promotion.

(2) Telemarketing fraud is a class B felony. In addition, any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit telemarketing fraud, or that facilitated or assisted this activity, shall be forfeited subject to chapter 712A.

(3) For purposes of this section, “telemarketing” means a plan, program, or campaign, including a prize promotion or investment opportunity, that:

- (a) Is conducted to include the purchase of goods or services or to solicit funds or contributions by use of one or more telephones; and
- (b) Involves more than one telephone call.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Cancer.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1990, Congress passed the Breast and Cervical Cancer Mortality Act, leading to the creation of cancer screening programs in all fifty states. No federal funds were authorized under this Act for treatment, only diagnostic services. The Hawaii Breast and Cervical Cancer Control Program (HBCCCP) was established in 1997. Approximately two thousand women have been screened through the HBCCCP since its inception. Thirty-five cases of breast cancer have been diagnosed through HBCCCP for a rate of cancer of 1.1 per cent, as compared with the rate of all other programs combined nationally of 0.8 per cent. Every year, the number of women screened increases dramatically. Native Hawaiian women have a higher rate of developing breast cancer than the national average. In addition, one case of cervical cancer has been recently detected.

One of the problems with the current program is that while the screening is free, there are no funds for treatment for certain individuals diagnosed with breast cancer in this State. This has caused significant problems in diagnosing uninsured and underinsured patients with cancer:

- (1) Patients with no insurance who seek treatment have been billed at "fee-for-service" rates, leaving those most economically challenged to face insurmountable financial obligations; or
- (2) Some patients have denied themselves treatment to avoid financial catastrophe, and may return in an advanced stage of cancer, increasing the overall costs of treatment.

Recognizing these difficulties, Congress and President Clinton enacted the Breast and Cervical Cancer Prevention and Treatment Act of 2000, Public Law 106-354, whereby states can provide coverage of treatment costs for eligible women diagnosed through their breast and cervical cancer screening programs through their respective state medicaid programs. Further, states that choose this coverage will receive enhanced federal funding equal to the funding for the State children's health insurance program.

Federal law prohibits medicaid coverage of legal resident aliens who enter the United States after August 22, 1996, for the first five years of their U.S. residency. In addition, aliens who are not legal resident aliens are generally not eligible for medicaid. Therefore, such aliens, even if diagnosed with breast or cervical cancer through the HBCCCP, would not be eligible for medicaid coverage of treatment costs.

The purpose of this Act is to address the breast and cervical cancer treatment needs of women who either:

- (1) Are resident aliens of Hawaii who are not eligible for medicaid; or
- (2) Would be eligible under medicaid except that the person has health care coverage that specifically does not provide coverage of cancer treatment.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- Breast and cervical cancer treatment program. (a) There is established the breast and cervical cancer treatment program, to be administered by the department of human services, to assist women who have been diagnosed with breast or cervical cancer by the Hawaii Breast and Cervical Cancer Control Program

(HBCCCP), but who are not eligible for federally-funded medicaid coverage as provided by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

(b) Under the breast and cervical cancer treatment program, the department shall provide state-funded medical assistance, as appropriated by the legislature, to women who are diagnosed with breast or cervical cancer through HBCCCP, but who are not eligible for federal medicaid coverage; provided that the person either:

- (1) Is a resident alien of Hawaii who is not eligible for medicaid; or
- (2) Would be eligible under medicaid except that the person has health care coverage that specifically does not provide coverage for cancer treatment.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$229,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$243,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the breast and cervical cancer treatment program.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 279

S.B. NO. 1144

A Bill for an Act Relating to Minimum Wage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 387-2, Hawaii Revised Statutes, is amended to read as follows:

“§387-2 Minimum wages. Except as provided in section 387-9 and this section, every employer shall pay to each employee employed by the employer wages at the rate of not less than [~~\$3.85 per hour beginning January 1, 1988, \$4.75 per hour beginning April 1, 1992, and~~]:

- (1) \$5.25 per hour beginning January 1, 1993[-];
- (2) \$5.75 per hour beginning January 1, 2002; and
- (3) \$6.25 per hour beginning January 1, 2003.

The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than [~~twenty~~] 25 cents below the applicable minimum wage by the employee’s employer and the combined amount the employee receives from the employee’s employer and in tips is at least [~~fifty~~]¹ 50 cents more than the applicable minimum wage.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2002.

(Approved June 25, 2001.)

Note

1. So in original.

ACT 280

S.B. NO. 1236

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Federal Personal Responsibility and Work Opportunity Act of 1996 abolished the sixty-one-year-old Aid to Families with Dependent Children entitlement program and replaced it with a transitional aid program called the Temporary Assistance to Needy Families (TANF) program. TANF requires recipients who are able to work to secure employment at the earliest opportunity. The new law places a heavy burden on the states to meet strict work participation requirements.

The federal requirements have set a laudable goal. Work is the cornerstone of the community's shared values of personal responsibility and self-sufficiency. In addition, work promotes self-discipline and self-esteem.

The vast majority of the recipients of public assistance value parental responsibility and a strong work ethic, and will accept financial responsibility for themselves and their children when given a real opportunity to achieve self-sufficiency. However, public assistance recipients are frustrated by barriers preventing them from joining the work force on a permanent basis. Moreover, strong competition for scarce jobs often leaves behind those with little experience or education.

Women are the head-of-household in over ninety per cent of financially assisted households. Approximately two-thirds of all women in Hawaii are working in sales, clerical, and service type jobs, receiving the lowest wages. It is unlikely that the majority of financially assisted households will be able to move out of poverty and be self-sufficient without adding to their knowledge and skills to increase their earning capacity.

The legislature finds that transitional benefits are needed to provide the necessary support to enable recipients to secure education and training beyond high school.

The purpose of this Act is to support the successful transition from public assistance to self-sufficiency through a transitional benefits program for public assistance recipients. The department of human services, through the financial assistance advisory committee, is encouraged to work in collaboration with the University of Hawaii to establish policies that encourage the pursuit and successful completion of higher education for single parents and their children to achieve a stable future.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2002-2003, for the bridge-to-hope program, including one position for outreach.

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

ACT 281

S.B. NO. 1276

A Bill for an Act Relating to Cybersquatting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CYBERSQUATTING

§481B-A Definitions. As used in this part, unless the context otherwise requires:

“Claimant” means the person alleging a violation of this part.

“Domain name” means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

“Mark” includes “trademarks”, “trade names”, and “service marks” as defined in 481A-2.

“Person” means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

“Traffics in” refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, or any other transfer for consideration or receipt in exchange for consideration.

§481B-B Cybersquatting and cyber piracy prohibited. (a) A person shall be liable in a civil action by the owner of any distinctive mark registered and used in Hawaii, without regard to the goods or services of the parties, if that person in bad faith: registers, traffics in, or uses a domain name that is identical or confusingly similar to that mark.

(b) Any person who in bad faith registers a domain name that consists of the name of another living person, or a name substantially and confusingly similar thereto, without that person’s consent, shall be liable in a civil action by the person.

(c) A person shall be liable for using a domain name under section 481B-B(a) only if that person is the domain name registrant or the registrant’s authorized licensee.

§481B-C Determining bad faith intent. (a) In any action brought pursuant to this part, it shall be the claimant’s burden to prove by a preponderance of the evidence the person’s bad faith intent. In determining whether there is bad faith intent pursuant to section 481B-B, a court may consider factors, including, but not limited to, the following:

- (1) The trademark or other intellectual property rights of the person, if any, in the domain name;
- (2) The person’s prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

- (3) The person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
- (4) The person's intent to divert users from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;
- (5) The extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify the person;
- (6) The person's offer to transfer, sell, or otherwise assign the domain name for financial gain without having used or having an intent to use, the domain name in the bona fide offering of any goods or services or the person's prior conduct indicating a pattern of such conduct;
- (7) The person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;
- (8) The person's registration or acquisition of multiple domain names that the person knew were identical or confusingly similar to marks of others that were distinctive at the time of registration of the domain names, without regard to the goods or services of the parties;
- (9) The person's registration or acquisition of multiple domain names that the person knew were identical or confusingly similar to the name of another living person, without the person's consent; and
- (10) The person sought or obtained consent from the rightful owner to register, traffic in, or use the domain name.

(b) Bad faith intent described in subsection (a) shall not be found in any case in which the court determines that the person alleged to be in violation of this part believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

§481B-D Exceptions. (a) A person who in good faith registers a domain name consisting of the name of another living person, or a name substantially and confusingly similar thereto, shall not be liable under section 481B-B if the name is used in, affiliated with, or related to a work of authorship protected under title 17, United States Code, including a work made for hire as defined in section 101 of title 17, United States Code, and if the person registering the domain name is the copyright owner or licensee of the work, the person intends to sell the domain name in conjunction with the lawful exploitation of the work, and the registration is not prohibited by a contract between the registrant and the named person. The exception under this subsection shall apply only to a civil action brought under this part and shall in no manner limit the protections afforded under the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) or other federal or state law.

(b) The domain name registrar or registry or other domain name authority shall not be liable for damages or other remedies under section 481B-E for the registration or maintenance of a domain name for another, regardless of whether the domain name is finally determined to infringe the mark.

§481B-E Damages and remedies. (a) Any persons whose rights under section 481B-B have been violated may bring a civil action against the person responsible for the violation.

(b) In any civil action brought under this part, if the court finds a violation of section 481B-B, the court may award:

- (1) Injunctive relief, including the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark;
- (2) Equitable relief;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Costs of the action; and
- (6) Reasonable attorney's fees.

(c) A claimant who files suit under this part, prior to the commencement of trial, may elect to recover, instead of compensatory and punitive damages, an award of statutory damages in an amount of not less than \$1,000 or threefold damages by the claimant sustained, whichever sum is the greater, and reasonable attorney's fees together with the costs of the suit."

SECTION 2. Chapter 481B, Hawaii Revised Statutes, is amended by designating sections 481B-1 to 481B-14 as part I and inserting a title before section 481B-1 to read as follows:

"PART I. MISCELLANEOUS PROVISIONS"

Section 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 2001.)

ACT 282

S.B. NO. 1365

A Bill for an Act Relating to the Weed and Seed Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Weed and Seed strategy is a United States Department of Justice initiative that is administered locally by the United States Attorney's Office. Initiated in 1992, the strategy currently includes more than two hundred forty-nine sites in two hundred twenty-six cities across the country.

The Weed and Seed strategy is a collaborative effort among law enforcement (federal, state, and county) agencies, social service agencies, private businesses, nonprofit organizations, and residents to reclaim, restore, and rebuild communities. The four key elements of the Weed and Seed Program are:

- (1) Law enforcement;
- (2) Community policing;
- (3) Prevention, intervention, and treatment programs; and
- (4) Neighborhood restoration.

The Weed and Seed strategy works with local law enforcement to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted neighborhoods by "weeding" out the criminal element in the community. Community policing involves having police officers work closely with community residents to develop solutions to violent and drug-related crimes. The next step is to "seed" the

community with human services that include prevention, intervention treatment, and neighborhood revitalization.

The legislature finds that the Weed and Seed strategy has been successful since its inception in the Kalihi-Palama and Chinatown areas of downtown Honolulu as a weed and seed site. The legislature further finds that since the beginning of the program, crime in those areas has been significantly reduced. The legislature further finds that the program's success warrants its expansion into other communities.

The purpose of this Act is to make a grant under chapter 42F, Hawaii Revised Statutes, to the Hawaii Community Foundation to expand the Weed and Seed strategy to other communities that meet federal guidelines for receiving federal funding under the Weed and Seed strategy.

SECTION 2. The Weed and Seed strategy shall partner with the Hawaii Community Foundation, a nonprofit tax exempt organization.

SECTION 3. The legislature further finds that the Hawaii Community Foundation has long been recognized for its efforts to bring diverse interest groups in the community together to work for the common good. For nearly a century, the Hawaii Community Foundation has administered funds on behalf of charitable interests in the community with experience and integrity.

The legislature further finds that the grant under this Act is in the public interest and serves the public health, safety, and welfare.

SECTION 4. There shall be a steering committee for the Weed and Seed strategy. The United States Attorney for Hawaii shall chair the steering committee. The steering committee shall advise the Hawaii Community Foundation regarding the disbursements of the grant funds.

SECTION 5. The Hawaii Community Foundation shall establish an account to receive legislative appropriations, federal funds, and private contributions for the Weed and Seed strategy.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2001-2002, as a grant-in-aid pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Community Foundation for the purposes of this Act.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 2001.

(Approved June 25, 2001.)

ACT 283

S.B. NO. 1435

A Bill for an Act Relating to Hydrogen Research and Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Scientists have recognized hydrogen as a potential source of fuel for many years. Currently, hydrogen is used in industrial processes, rocket fuel, and spacecraft propulsion. With further research and development, hydrogen could

competitively serve as an alternative source of energy for fueling vehicles and generating electricity.

Recognizing the potential of hydrogen fuel, the United States Department of Energy and the private sector have for several years funded hydrogen research and development programs. The federal government alone allocates an average of \$18,000,000 annually for hydrogen research and development. Currently, the market capitalization of fuel cell companies that rely on hydrogen as the fuel source for the cell is in excess of \$10,000,000,000.

The legislature finds that Hawaii represents an excellent site to attract government and industry investment in hydrogen. Hawaii's major advantages include:

- (1) The availability of indigenous renewable resources, including geothermal energy;
- (2) The excellent research capabilities at the University of Hawaii;
- (3) Hawaii's central location for trade opportunities with Pacific Rim nations; and
- (4) Hawaii's high transportation fuel costs.

There has been significant progress in hydrogen research and development in Hawaii. For example, in 1999, University of Hawaii chemists discovered a new way to store hydrogen energy that may result in more economical, pollution-free vehicles. Tackling one of hydrogen's major challenges, the team found a catalyst that will release hydrogen from lightweight materials at a moderate temperature. This has major implications for developing effective fuel cells for vehicles. As a result of these accomplishments, the Hydrogen Technical Advisory Panel and the United States Department of Energy named the Hawaii team leader as the "1999 Research Success Story."

In addition, the 2000 legislature requested a study to recommend options that could result in hydrogen becoming a future ingredient in the State's energy economy. The Hawaii natural energy institute (HNEI) of the University of Hawaii concluded that large-scale hydrogen use for transportation can be competitive this decade. The study also determined that fleet and military transportation on Oahu has the largest potential for hydrogen and fuel cell use.

On the national level, many advancements are taking place to develop technologies that will utilize hydrogen as a fuel source. Major companies are investing in the development of fuel cells for both stationary and mobile power. Automakers are projecting the commercial availability of fuel cell powered vehicles that could be fueled by hydrogen within this decade. Significant amounts of investments are being made to develop fuel cells and other distributed generation technologies.

With its traditional high fuel costs and a wealth of renewable energy resources, Hawaii could attract these advanced technology development companies for both research and development, testing, and deployment. The University of Hawaii is recognized as a "center for excellence in hydrogen research" by the United States Department of Energy. These factors can lead to the development of a hydrogen-based economy where Hawaii produces more of its own environmentally clean fuels, thus reducing its dependence on fossil fuels, and resulting in job growth, reduced pollution, and a more robust state economy.

The legislature finds that the State should do more to continue efforts to enhance hydrogen use in Hawaii. Accordingly, the purpose of this Act is to establish a hydrogen private/public partnership to implement the recommendations contained in HNEI's 2001 study.

SECTION 2. (a) There is established within the department of business, economic development, and tourism, for administrative purposes only, the hydrogen public/private partnership to support and promote hydrogen use in Hawaii's energy

economy. The HNEI of the University of Hawaii shall provide assistance to the department.

(b) The department shall invite the participation of the following entities to the partnership:

- (1) The State, including the University of Hawaii and any of its entities, as appropriate;
 - (2) The counties;
 - (3) The federal government, including the military;
 - (4) The utilities; and
 - (5) The private sector.
- (c) The department, with the assistance of the partnership, shall:
- (1) Sponsor a stakeholder workshop with interested parties to review and critique the Hawaii hydrogen plan;
 - (2) Evaluate and adopt policy options to promote industry investment in hydrogen infrastructure;
 - (3) Initiate pilot projects to install multi-megawatt electrolyzers to produce hydrogen from indigenous resources on the Kona coast of the island of Hawaii;
 - (4) Conduct a comprehensive evaluation and market study for the production of hydrogen on the island of Hawaii and the importation and production of hydrogen for Oahu;
 - (5) Conduct engineering assessments of biomass or wind energy pathways for hydrogen for all islands;
 - (6) Initiate pilot projects that include distribution of hydrogen produced on the island of Hawaii to the other islands;
 - (7) Initiate discussion of tax incentives for investors; and
 - (8) Conduct assessments of potential cost benefits to consumers and recommend ways to educate consumers about the benefits of hydrogen fuel.

The department shall submit annual reports regarding the partnership to the legislature no later than twenty days prior to the convening of each regular session. The reports shall include summaries of accomplishments, including expenditures, research projects funded, and external funding received.

SECTION 3. There is appropriated out of the special land and development fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2001-2002 to support hydrogen research and development efforts; provided that funds shall be made available under this Act on the basis of one dollar of special fund moneys to not less than one dollar from the federal government.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on July 1, 2006; provided that section 3 shall take effect on July 1, 2001.

(Approved June 25, 2001.)

ACT 284

H.B. NO. 860

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-132.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-132.5 Credit for military service. (a) Any employee who becomes a member of the system in accordance with section 88-42 after June 17, 1996, and has rendered honorable active military service in the armed forces of the United States, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with ten years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(b) Any employee who became a member of the system in accordance with section 88-42 before June 18, 1996, and has rendered honorable active military service in the armed forces of the United States, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with eight years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(c) Any retirant receiving a pension or retirement allowance under this chapter, who retired prior to July 2, 1989, who rendered honorable active military service in the armed forces of the United States and who had at least eight years of credited service in the system at retirement, shall be eligible for an increase in pension or retirement allowance for each year of military service up to four years, as follows:

- (1) A retirant with eight years of credited service in the system at retirement may be certified with up to two years of military service;
- (2) A retirant with twenty years of credited service in the system at retirement may be certified with up to three years of military service; and
- (3) A retirant with twenty-five years of credited service in the system at retirement may be certified with up to four years of military service.

Upon certification by the system, each year of certified military service shall provide an increase of \$36 a month in the retirant's pension or retirement allowance effective July 1, 2001; provided that the retirant claims the military service between July 1, 2001, and June 30, 2002. Military service certified under this subsection shall not be considered membership service credit nor shall it provide for any other benefits under this chapter.

[(e)] (d) For the purposes of subsections (a) and (b), the latest membership date shall be used if there is a change in membership date due to termination and re-entry into the system.

[(d)] (e) Any retirant who returns to employment, is reenrolled as a member of the system, and has at least three years of credited service in the system during the period of reemployment may be credited with membership service credit for active military service as provided in subsection (a) or (b); provided that membership service credit shall be based upon the member's total service[-] and the service was not previously certified in accordance with subsection (c).

[(e)] (f) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59 and 88-272.

[(f)] (g) A contributory member's active military service shall be considered service in the member's occupation at the time that service is credited and shall be purchased at the rate specified in section 88-45, and the retirement allowance provided by that service shall be calculated as provided in section 88-74.

[(g)] (h) Any violation of this section shall result in the forfeiture of the amount of the purchase of membership service and loss of benefits and membership service credit for military service."

SECTION 2. There is appropriated out of the employees' retirement system's investment earnings the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2001-2002, to carry out the purposes of this Act.

The sum appropriated shall be expended by the employees' retirement system for the purposes of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.
(Approved June 28, 2001.)

ACT 285

S.B. NO. 755

A Bill for an Act Relating to Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that private development of harbor facilities on state lands should be encouraged to save taxpayers the burden of funding costly construction or improvements. The legislature further finds that private development would more likely result in projects being completed on time.

The purpose of this Act is to allow the department of transportation's harbors division and the department of land and natural resources to enter into capital advancement contracts with private developers to make up to \$5,000,000 of public improvements to small boat or commercial harbor facilities, and to do so without legislative approval where the value of the contract does not exceed \$2,000,000.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§200- Private financing of small boat harbor improvements. (a) Notwithstanding any law to the contrary, the board may enter into a capital advancement contract with a private party for any public improvement to or

construction of a state small boat harbor, if the chairperson determines that a capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the board; provided that all related transactions shall be subject to state audit.

(d) The board may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the board shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the board pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this section:

“Capital advancement contract” means an agreement between the board and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state small boat harbor and in return for which the private party may be reimbursed in a manner to be determined by the board.

“Total value” includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project.”

SECTION 3. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§266- Private financing of harbor improvements. (a) Notwithstanding any law to the contrary, the department of transportation may enter into a capital advancement contract with a private party for any public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State, if the director of transportation determines that a capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the department of transportation; provided that all related transactions shall be subject to state audit.

(d) The department of transportation may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the department of transportation shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the department pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this subsection:

"Capital advancement contract" means an agreement between the department of transportation and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State and in return for which the private party may be reimbursed in a manner to be determined by the department.

"Total value" includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project."

SECTION 4. New statutory material is underscored.²

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 28, 2001.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 286

H.B. NO. 429

A Bill for an Act Making an Appropriation for Blindness Skill Training.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Federation for the Blind has found that many older adults with vision problems lack proficiency in the basic skills of cooking, traveling, and communicating and are unable to successfully complete those tasks which are common to everyday life, such as preparing a meal, shopping for essentials, or writing checks. Unnecessary institutionalization and the accompanying costs of long-term health care for any of these individuals exact a great personal and

financial toll. The teaching of what is known as blindness skills and their application to real-life situations is imperative to prevent this from occurring wherever possible.

The purpose of this Act is to appropriate funds to establish four rehabilitation teacher positions who will teach blindness skills that enable individuals age fifty-five or older who are legally blind or who have severe visual impairment to live as independently as possible. The teachers will work with those one thousand nine hundred thirteen people over the age of fifty-five on the department of human services blind register and those numerous persons who are blind or have a visual impairment over the age of fifty-five who are not registered, by teaching blindness skills and delivering independent living services in their home or places of residence.

The U.S. Department of Education is offering a generous grant that will bring in almost ten times as much federal money, \$225,000, as the \$25,000 in state money requested in this appropriation. This is a win-win situation for the State.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2001-2002 to bring in \$225,000 in federal funds from the U.S. Department of Education's Rehabilitation Services Administration's Independent Living Services for Older Individuals Who Are Blind grant to fund four rehabilitation teacher positions in the department of human services.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 28, 2001.)

ACT 287

H.B. NO. 469

A Bill for an Act Relating to School Personnel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-605, Hawaii Revised Statutes, is amended to read as follows:

“§302A-605 Principals and vice-principals. ~~(a) Principals [and vice-principals] shall meet the department's certification requirements and shall have [served as a teacher for a period of not less than five years.]~~ not less than five years of appropriate school-level experience of which at least three years shall have been as a teacher.

(b) Vice-principals shall meet the department's certification requirements and shall have appropriate school-level experience as determined by the department.

(c) On a case-by-case basis, the department may waive the certification requirements and school-level experience for vice-principal candidates with appropriate administrative experience. The department shall establish criteria and reasons for waivers pursuant to chapter 91.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

A Bill for an Act Relating to Domestic Violence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 806-73, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A probation officer shall investigate any case referred to the probation officer for investigation by the court in which the probation officer is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer’s supervision of the terms and conditions of the defendant’s probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and report thereon to the court, and shall use all suitable methods to aid the defendant and bring about an improvement in the defendant’s conduct and condition. The probation officer shall keep these records and perform other duties as the court may direct. Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under sections 580-10(d)(1), 586-4(d), 586-11(a), or 709-906, may be notified by the defendant’s probation officer when the probation officer has any information relating to the safety and welfare of the victim. No probation officer shall be subject to civil liability or criminal culpability for any disclosure or non-disclosure, under this section, if the probation officer acts in good faith and upon reasonable belief.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to comply with the Quality Housing and Work Responsibility Act of 1998, P.L. 105-276, 112 Stat. 2461, by establishing resident advisory boards in federal public housing projects. The resident advisory boards will be responsible for assisting and making recommendations to the housing and community development corporation of Hawaii regarding the development of the public housing agency plan and any significant amendments or modifications to it.

SECTION 2. Chapter 201G, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§201G- Resident advisory boards; establishment.** (a) The corporation may establish a resident advisory board or boards, which shall be comprised of federal public housing residents or section 8 tenant-based housing assistance recipients, to assist and make recommendations to the corporation regarding the develop-

ment of the public housing agency plan and any significant amendments or modifications to it. The members of the resident advisory board or boards shall adequately reflect and represent residents of federal public housing projects and recipients of section 8 tenant-based assistance administered by the corporation.

(b) The members of the resident advisory board shall not be compensated for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred while engaged in business for the resident advisory board.

(c) The corporation may adopt rules in accordance with chapter 91 with respect to the establishment of the resident advisory board or boards including, but not limited to, rules concerning the composition, eligibility, selection, and term of members. This section shall not apply if it conflicts with any federal law.

§201G- Resident advisory board nomination of resident board member. In the event of a vacancy for the resident member seat on the corporation board, the resident advisory board shall compile a list of five individuals for the governor's consideration for appointment to the board; provided the nominees to the board shall be:

- (1) Participants who are directly assisted by the corporation under the federal public housing or section 8 tenant-based programs and who need not be members of the resident advisory board;
- (2) At least eighteen years of age; and
- (3) Authorized members of the assisted household.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 290

H.B. NO. 540

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to comply with the Quality Housing and Work Responsibility Act of 1998, P.L. 105-276, 112 Stat. 2461, by establishing a seat for a federal public housing resident or recipient of section 8 tenant-based housing assistance who is directly assisted by the housing and community development corporation of Hawaii to the housing and community development corporation of Hawaii's board of directors.

SECTION 2. Section 201G-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a board consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. One public member shall be the chairperson of the rental housing trust fund advisory commission. At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or

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federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board. The director of business, economic development, and tourism and the director of human services, or their designated representatives, and a representative of the governor's office, shall be ex officio voting members. The corporation shall be headed by the board."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

ACT 291

H.B. NO. 545

A Bill for an Act Relating to the Rental Housing Trust Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The housing and community development corporation of Hawaii, with the approval of the director of finance and the governor, is authorized pursuant to part III, chapter 39, Hawaii Revised Statutes, and part III, chapter 201G, Hawaii Revised Statutes, to issue revenue bonds in an aggregate principal amount not to exceed \$30,000,000, at such times and in such amounts as it deems advisable for the purpose of carrying out the provisions of subpart Q of part III of chapter 201G, Hawaii Revised Statutes.

The proceeds of such revenue bonds shall be deposited into the rental housing trust fund created in section 201G-432, Hawaii Revised Statutes.

SECTION 2. There is appropriated out of the rental housing trust fund the sum of \$30,000,000, or so much thereof as may be necessary, for fiscal year 2001-2002, to carry out the purposes of the rental housing trust fund.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 28, 2001.)

ACT 292

H.B. NO. 646

A Bill for an Act Relating to the Sale of Sterile Syringes for the Prevention of Disease.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 325, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§325- Sale of sterile syringes for the prevention of disease. (a) The sale of sterile hypodermic syringes in a pharmacy, physician’s office, or health care institution for the purpose of preventing the transmission of dangerous blood-borne diseases, may be made solely by:

- (1) A pharmacist licensed under chapter 461;
- (2) A physician as defined in section 327E-2;
- (3) A health care provider as defined in section 327E-2; or
- (4) An authorized agent of a pharmacy, as defined in section 461-1, or of a health care institution, as defined in section 327E-2, operating under the direction of a licensed pharmacist or physician.

(b) The seller under subsection (a) shall provide the purchaser written educational material approved by the department of health under subsection (e) about prevention of blood-borne diseases, drug treatment, and safe disposal of used syringes at sites where syringes are sold.

(c) The sale or purchase of sterile hypodermic syringes under subsection (a) shall not constitute an offense under section 329-43.5.

(d) Nothing in this section provides immunity from prosecution to any person who violates any law that prohibits or regulates the use, possession, dispensing, distribution, or promotion of controlled substances, dangerous drugs, detrimental drugs, or harmful drugs, including but not limited to violation of section 329-41, 329-42, or 712-1241 to 712-1249.6.

(e) The department of health shall produce and make available to pharmacies, physicians’ offices, and health care institutions written educational material about prevention of blood-borne diseases, drug treatment, and safe disposal of used syringes for distribution under subsection (b).

(f) For purposes of this section, “sell” or “sale” means to transfer to another for value or consideration.”

SECTION 2. The director of health shall:

- (1) Develop and implement a system to dispose of used syringes received from the public;
- (2) Develop and implement a system to track syringes purchased in accordance with this Act that are exchanged for new syringes under the state needle exchange program; and
- (3) Submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2002 on the status of implementing the disposal and tracking systems.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval; provided that section 1 shall take effect on July 1, 2002, and shall be repealed on July 1, 2004.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Drought Mitigating Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that farmers and ranchers during periods of drought suffer from loss of crops and livestock. This results in losses, which often takes farmers and ranchers years to recover from, resulting in loss of income and jobs for hired workers, loss of business for agricultural suppliers, and loss of tax revenues. These losses can be minimized by the construction of water storage facilities to alleviate water problems during times of drought.

The purpose of this Act is to provide an income tax credit for the construction of drought mitigating water storage facilities, or for the repair or reconstruction of existing drought mitigating water storage facilities.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Drought mitigating water storage facility; income tax credit.

(a) There shall be allowed to each eligible taxpayer subject to the taxes imposed by this chapter, an income tax credit, which shall be deductible from the eligible taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the credit shall be four per cent of the qualifying costs incurred and paid by the eligible taxpayer during the taxable year for each qualified water storage facility in the State, and shall not include construction or repair costs for which another credit was claimed under this chapter for the taxable year.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualifying costs incurred and paid by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the construction or repair costs for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as taxable income for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.

(c) If the tax credit under this section exceeds the eligible taxpayer's income tax liability, the excess of the credits over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than \$1. All claims, including any amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) The credit allowed under this section shall be available for taxable years beginning after December 31, 2000, and shall not be available for taxable years beginning after December 31, 2005.

(f) As used in this section:

“Eligible taxpayer” means a taxpayer who:

- (1) Is a farmer or rancher; and
- (2) Is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for Hawaii state income tax purposes.

“Net income tax liability” means net income tax liability reduced by all other credits allowed under this chapter.

“Qualifying costs” means any cost incurred and paid by the taxpayer after December 31, 2000, for the new construction of a qualified water storage facility or the repair or reconstruction of an existing qualified water storage facility, including the costs of new equipment related to the construction or repair of the new or existing qualified water storage facility, but does not include amounts received through grant or subsidy from any federal or state government.

“Qualified water storage facility” means a water storage facility that is part of a conservation plan approved by the local soil and water conservation district.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 294

S.B. NO. 64

A Bill for an Act Relating to Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§710- Interference with reporting an emergency or crime. (1) A person commits the offense of interference with reporting an emergency or crime if the person intentionally or knowingly prevents a victim or witness to a criminal act from calling a 911-emergency telephone system, obtaining medical assistance, or making a report to a law enforcement officer.

(2) Interference with the reporting of an emergency or crime is a petty misdemeanor.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 295

S.B. NO. 69

A Bill for an Act Relating to Protective Order.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-5.5, Hawaii Revised Statutes, is amended to read as follows:

“§586-5.5 Protective order; additional orders. (a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for [such] a further fixed reasonable period as the court deems appropriate [~~not to exceed three years from the date the protective order is granted~~].

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court further may order that the party be taken to the nearest facility for emergency examination and treatment.

(b) A protective order may be extended for [a period not to exceed three years from the expiration of the preceding protective order.] such further fixed reasonable period as the court deems appropriate. Upon application by a person or agency capable of petitioning under section 586-3, the court shall hold a hearing to determine whether the protective order should be extended. In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred prior to the initial restraining order and whether good cause exists to extend the protective order.

The extended protective order may include all orders stated in the preceding restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. The court may terminate the extended protective order at any time with the mutual consent of the parties.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Note

1. Prior to amendment “,” appeared here.

ACT 296

S.B. NO. 123

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State must do more to help Hawaii’s homeless to become more stable by providing assistance with health, housing, and social issues so that they may be able to obtain and retain permanent housing and maintain economic independence and self-sufficiency in the long-term. Programs designed to assist homeless persons are more effective and efficient when a continuum of programs is provided.

However, the safety net established to provide relief and recovery for Hawaii’s homeless is eroding due to several funding issues.

Homeless shelters, the last safety net for families plunged into homelessness, may soon be unavailable to the homeless that they are meant to help. Seventy per cent of homeless families pay their program fees at homeless shelters with welfare benefits. The loss of those benefits when the five-year welfare clock runs out on most of these families will result in eviction for nonpayment of program fees, because homeless shelters cannot afford to operate without the combination of state homeless stipend and tenant program fees.

The demand for shelter services has increased over the years, while the state homeless programs’ budget has sustained numerous across-the-board spending cuts. The state homeless programs’ budget is \$1,300,000 less than it was in 1996. The grant program which is the primary strategy for homeless prevention is barely alive with a \$61,000 annual appropriation. Further, without additional funding to adequately support the efforts of the homeless providers, the outreach agencies and shelters will be forced to limit the numbers they serve or close their operations.

All of the shelters maintain a waiting list for services. There is little comfort to a homeless family or individual who is homeless to be added to a wait list when immediate relief is needed. Future plans for shelter development to meet the growing needs of the homeless include:

March 2001	Seventy-two units for homeless mentally ill at Barbers Point
March 2001	Thirty-six units for homeless families at Barbers Point
November 2001	Thirty plus units for homeless singles and families in Maui
2002	Thirty units for homeless families at Waianae, Hawaii

However, funding for operation of these additional shelter units has not been adequately addressed.

The purposes of this Act are to:

- (1) Restore adequate funding levels to the state homeless programs;
- (2) Maintain adequate funding to support much needed additional shelter inventory; and
- (3) Increase funding levels for homeless assistance, pursuant to chapter 201G, part IV, Hawaii Revised Statutes, by providing a deeper subsidy for those families losing their welfare benefits.

Under the latter proposal, shelters participating in the state stipend program will be able to provide shelter at little or no cost to families that have lost their welfare

benefits; provided that the adults in the family commit to eighty per cent or better participation level in self-sufficiency programs and input/output agreements.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary, for fiscal year 2001-2002 and the sum of \$100,000, or so much thereof as may be necessary, for fiscal year 2002-2003 to accomplish the purposes of this Act.

SECTION 3. The sums appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 28, 2001.)

ACT 297

S.B. NO. 209

A Bill for an Act Relating to Parking for Persons with Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding five new sections to part III to be appropriately designated and to read as follows:

“§291- Fraudulent verification of an applicant as a person with a disability; penalty. A physician who fraudulently verifies that an applicant is a person with a disability to enable the person to represent to the issuing agency that the person is qualified to obtain a removable windshield placard, temporary removable windshield placard, or special license plates shall be guilty of a petty misdemeanor. Each fraudulent verification shall constitute a separate offense.

§291- Replacement of a lost, stolen, or mutilated placard or identification card. A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost or mutilated may be replaced upon the submittal of a written statement by a person with a disability that the placard or identification card was either lost or mutilated and a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. If a placard is lost, the county may charge a replacement fee to be paid to the issuing agency. A removable windshield placard, temporary removable windshield placard, or identification card that is reported stolen may be replaced upon police verification that the placard was stolen and submittal of a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. If a police verification is not obtained in the case of a stolen placard or identification card, the county may charge a replacement fee to be paid to the issuing agency. The replacement fee amount shall be established by the disability and communication access board.

§291- Fraudulent manufacture or alteration of placards and identification cards. Any person who fraudulently manufactures or alters a removable windshield placard, temporary removable windshield placard, or identification card for personal use, sale, or issuance to another person to circumvent the issuance requirements of this part, and any person who uses a fraudulently manufactured or

altered placard or identification card to circumvent the issuance requirements of this part, shall be guilty of a petty misdemeanor. The fraudulent manufacture or alteration of each placard and of each identification card for personal use, sale, or issuance or is otherwise used in violation of this section shall constitute a separate offense.

§291- Issuance of identification card. Each issuing agency shall issue one identification card when it issues a removable windshield placard, temporary removable windshield placard, or special license plates to each person with a disability. The identification card shall have the same date of expiration as the removable windshield placard, temporary removable windshield placard, or special license plates issued to the person. The identification card shall not be issued with a second removable windshield placard or second temporary removable windshield placard. The identification card shall indicate the applicable serial number of the removable windshield placard or temporary removable windshield placard or the special license plates number. The identification card shall also indicate the applicable serial number of the second removable windshield placard or second temporary removable windshield placard if issued.

§291- Requirement to provide parking for persons with disabilities; penalty. Beginning July 1, 2002, any public or private entity that provides a parking space reserved for persons with disabilities shall comply with this part and any administrative rules adopted under this part. A private entity that fails to comply with this section shall be fined not less than \$250 nor more than \$500 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect any penalty provided for in this section shall be considered a civil action.”

SECTION 2. Section 291-51, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:
“‘Issuing agency’ means an agency authorized by a county to issue removable windshield placards, temporary removable windshield placards, special license plates, and identification cards pursuant to this part.

“‘Private entity’ means a private owner or lessee of a parking facility or site where invitation to the general public is expressed or implied.

“‘Private parking’ means a privately owned parking facility or site where invitation to the general public is expressed or implied.

“‘Public entity’ means the State or any of its counties.

“‘Public parking’ means a parking facility or site under state or county jurisdiction.”

2. By amending the definition of “disabled person” to read:

~~“[“Disabled person”]~~ “‘Person with a disability’ means a person with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

- (1) Cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, [or] orthopedic, renal, or oncological condition;
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Is restricted by lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second, when measured by

spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

- (4) Uses portable oxygen; or
- (5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association."

3. By amending the definition of "parking space reserved for disabled person" to read:

""Parking space reserved for [disabled] persons[⁽¹⁾ with disabilities" means a public or private parking space designated for the use of a [disabled] person with a disability that [(1)] is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines[; (2)] and is marked with a sign designating the parking space as reserved for [disabled] persons [; or (3)] ~~is otherwise clearly designated for the use of disabled persons.~~ with disabilities."

4. By amending the definition of "removable windshield placard" to read:

""Removable windshield placard" means a two-sided, hanger-style placard which includes on each side:

- (1) The international symbol of access which is white on a blue shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The ~~[seal of the State.²]~~ words "State of Hawaii".

5. By amending the definition of "sign designating the parking place¹ as reserved for disabled persons" to read:

""Sign designating the parking place¹ as reserved for [disabled] persons[⁽¹⁾ with disabilities" means a sign which contains:

- (1) The words, "Reserved Parking";
- (2) The international symbol of access;
- (3) Words indicating that the space is reserved for parking by [disabled] persons with disabilities who have valid placards or special license plates; and
- (4) The maximum fine for parking illegally in the space."

6. By amending the definition of "temporary removable windshield placard" to read:

""Temporary removable windshield placard" means a two-sided, hanger-style placard, which includes on each side:

- (1) The international symbol of access which is white on a red shield;
- (2) An identification number;
- (3) A date of expiration;
- (4) The ~~[seal of the State.²]~~ words "State of Hawaii"; and
- (5) The word "temporary".

SECTION 3. Section 291-51.5, Hawaii Revised Statutes, is amended to read as follows:

"§291-51.5 Special license plates. Upon application by a [disabled] person[⁽¹⁾ with a disability], each county shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport that person. The fee for the issuance of [a] special license [plate] plates shall not exceed the fee charged for [a] similar license [plate] plates for the same class vehicle."

SECTION 4. Section 291-51.6, Hawaii Revised Statutes, is amended to read as follows:

“§291-51.6 Temporary removable parking placards. ~~[The county shall require that the application for a temporary removable windshield placard be accompanied by a certificate of disability which verifies that the applicant meets the definition of a disabled person. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.]~~ Each county may issue one temporary removable windshield placard to each applicant who requests it and presents a certificate of disability that verifies the duration of the applicant's disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. The temporary removable fee amount shall be established by the disability and communication access board. The temporary removable windshield placard shall expire at the end of the last month of the applicant's disability.

A second temporary removable windshield placard may be issued to each applicant with a disability who so requests and upon payment of a fee to the issuing agency. The second temporary removable windshield placard fee amount shall be established by the disability and communication access board. The second temporary removable windshield placard shall have the same date of expiration as the first temporary removable windshield placard issued to the applicant.

Upon expiration of a temporary removable windshield placard, a person with a disability may apply for a new temporary removable windshield placard upon return of the expired placard and presentation of a new certificate of disability. No applicant shall have more than two valid temporary removable windshield placards issued under this part at any time. The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.”

SECTION 5. Section 291-51.7, Hawaii Revised Statutes, is amended to read as follows:

“§291-51.7 Reciprocity. The State, counties, and private property owners shall recognize removable windshield placards, temporary removable windshield placards, and special license plates which have been issued by authorities of other states and countries, for the purpose of identifying persons permitted to:

- (1) Utilize parking spaces reserved for ~~[disabled]~~ persons~~[-]~~ with disabilities; or
- (2) Exercise other parking privileges afforded by the State, counties, or private property owners for the benefit of ~~[disabled]~~ persons~~[-]~~ with disabilities.”

SECTION 6. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“§291-52 Issuance of removable windshield placard. Each county may issue one ~~[distinguishing]~~ removable windshield placard to each ~~[disabled person]~~ applicant who so requests and presents a certificate of disability~~[-]~~ that verifies that the applicant's disability is expected to last for at least four years. The removable windshield placard shall expire four years after the date of its issuance. A second removable windshield placard may be issued to each applicant who requests one. The second removable windshield placard shall have the same date of expiration as the first removable windshield placard issued to the applicant. A person with a disability may apply for a new removable windshield placard upon return of the

expired placard and presentation of a new certificate of disability. No person with a disability shall have more than two removable windshield placards issued under this part at any time. The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board. [The county may charge a fee to cover its costs.]”

SECTION 7. Section 291-53, Hawaii Revised Statutes, is amended to read as follows:

“§291-53 Nontransferability; penalty. The removable windshield placard, temporary removable windshield placard, or special license ~~[plate]~~ plates shall not be used by anyone other than the ~~[disabled] person~~³ with a disability to whom it is issued unless it is being used in connection with the transport of the ~~[disabled] person[-]~~ with a disability. An unauthorized person using the removable windshield placard, temporary removable windshield placard, or special license ~~[plate]~~ plates to obtain the special parking privileges authorized under this part or otherwise afforded by the State or counties, shall be guilty of a traffic infraction under chapter 291D and fined not less than ~~[\$150]~~ \$250 nor more than ~~[\$300-]~~ \$500. A removable windshield placard, temporary removable windshield placard, or special license ~~[plate]~~ plates may be ~~[revoked]~~ confiscated by a law enforcement officer or commissioned volunteer enforcement officer of the county law enforcement agency for any unauthorized use.”

SECTION 8. Section 291-54, Hawaii Revised Statutes, is amended to read as follows:

“§291-54 Display of removable and temporary removable windshield placards. The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for ~~[disabled] persons[-]~~ with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.”

SECTION 9. Section 291-55, Hawaii Revised Statutes, is amended to read as follows:

“§291-55 Parking privileges. Any vehicle displaying ~~[the]~~ special license plates, a⁴ removable windshield ~~[placards,]~~ placard, or a temporary removable windshield ~~[placards]~~ placard displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees, in any metered parking space designated for the use of ~~[disabled persons]~~ a person with a disability in accordance with law. Any vehicle displaying special license plates, a removable windshield ~~[placards,]~~ placard,⁵ or temporary removable windshield ~~[placards]~~ placard displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees in any metered or unmetered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.”

SECTION 10. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“§291-56 Rules. The disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the

issuance, renewal, [~~revocation,~~] confiscation,⁵ and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost [~~or~~], stolen, or mutilated placards[;] and identification cards, the design of the placard and special license plates, signage and marking of parking spaces, and penalties.”

SECTION 11. Section 291-57, Hawaii Revised Statutes, is amended to read as follows:

“[[⁶§291-57[⁶]] ~~[Disabled parking;] Parking spaces reserved for persons with disabilities; penalties.~~ (a) A person using a parking space reserved for [~~disabled~~] persons with disabilities without properly displaying a removable windshield placard, a⁴ temporary removable windshield placard, or special license [~~plate,~~] plates, in accordance with this part or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than [~~\$150~~] \$250 nor more than [~~\$300~~] \$500.

(b) Any [~~disabled~~] person who uses a parking space reserved for persons with disabilities and refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than [~~\$150~~] \$250 nor more than [~~\$300~~] \$500.⁷”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁸

SECTION 13. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Notes

1. Prior to amendment “space” appeared here. “Place” should be underscored.
2. Prior to amendment “;” appeared here.
3. “Person” should not be underscored.
4. “A” should be underscored.
5. Comma should be underscored.
6. So in original.
7. “\$500.” should be underscored.
8. Edited pursuant to HRS §23G-16.5.

ACT 298

S.B. NO. 640

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§141- Crop damage; civil liability.** (a) Any person who willfully or knowingly damages or destroys any crop, including silvicultural crops or agricultural commodities as defined in section 145-21, that is known by the person to be intended for personal or commercial purposes, or for research and development purposes by any private or public research facility, federal, state, or local government agency, or university shall be liable for twice the value of the crop or commodity damaged or destroyed.

(b) Damages available under this section shall be limited to twice the market value of the crop or commodity and the production, research, testing, replacement,

and crop or commodity development costs directly related to the damaged or destroyed crop or commodity.

(c) Rights and remedies under this section are in addition to any other rights or remedies otherwise available or penalties that may otherwise be imposed.”

SECTION 3.¹ New statutory material is underscored.²

SECTION 4.¹ This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 299

S.B. NO. 752

A Bill for an Act Relating to State Boating Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The State’s small boat harbors and other boating facilities are important public assets that are constructed, maintained, and operated for the purposes of recreational boating, landing of fish, and commercial vessel activities. They also provide the primary means of public access to the State’s ocean waters for fishing and ocean-based recreation by residents and visitors alike.

The cost of operating, maintaining, and managing state small boat harbors and other boating facilities, including the amortization (both principal and interest) of capital improvements, is paid from the boating special fund. The primary sources of these special fund revenues are mooring and other harbor use fees, and other sources such as lease rent and the state marine fuel tax. The state small boat harbors and other boating facilities are centers of recreation and economic activity, and as such, must be managed in a manner that facilitates recreation and commercial activity, and generates sufficient revenue for this purpose.

The legislature finds that the leasing of property within state small boat harbors or other boating facilities may be a viable means to achieve streamlined services, improve facilities, and increase revenues, at a reasonable cost to users. Existing restrictions that limit both the recreational and economic potential of these facilities should be examined and removed where appropriate.

The purpose of this Act is to clarify that leases issued for lands within small boat harbors and other state boating facilities may allow uses, other than maritime-related activities, that complement or support the maritime uses within these facilities, with the revenue derived by the State therefrom deposited into the boating special fund.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§200- Disposition of state boating facility properties. (a) Notwithstanding any law to the contrary, the board may lease fast lands within an existing state boating facility by public auction or by direct negotiation pursuant to section 171-59, for private development, management, and operation. For the purpose of this section, the term “state boating facility” means a state small boat harbor,

launching ramp, off-shore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter.

(b) The permissible uses under any lease disposed of under this section shall be consistent with the purpose for which the land was set aside by the governor pursuant to section 171-11. Permissible uses may include any use that will complement or support the maritime activities of state boating facilities.

(c) Disposition of public lands of state boating facilities constructed, maintained, and operated in accordance with this chapter shall not exceed a maximum term of fifty-five years.

(d) All revenues due to the State derived from leases of state boating facilities shall be deposited in the boating special fund.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 300

S.B. NO. 759

A Bill for an Act Relating to Tort Actions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§663- Release; joint tortfeasors; co-obligors; good faith settlement.

(a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:

- (1) Not discharge any other party not released from liability unless its terms so provide;
- (2) Reduce the claims against the other party not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and
- (3) Discharge the party to whom it is given from all liability for any contribution to any other party.

This subsection shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(b) For purposes of subsection (a), a party shall petition the court for a hearing on the issue of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, serving notice to all other known joint tortfeasors or co-obligors. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The petition shall indicate the settling parties and the basis, terms, and settlement amount.

Except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the notice, petition, and proposed order shall be served by certified mail, return receipt requested. Proof of service shall be filed with the court. Within twenty-five days of the mailing of the notice, petition, and proposed order, a nonsettling party may file an objection to contest the good faith of the settlement. If none of the nonsettling parties files an objection within the twenty-five days, the court may approve the settlement without a hearing. An objection by a nonsettling party shall be served upon all other parties. The party asserting a lack of good faith shall have the burden of proof on that issue.

Where a confidentiality agreement has been entered into regarding the claim or settlement terms, the court shall hear the matter in a manner consistent with preventing public disclosure of the agreement while providing other joint tortfeasors and co-obligors sufficient information to object to a proposed settlement.

(c) The court may determine the issue of good faith for purposes of subsection (a) on the basis of affidavits or declarations served with the petition under subsection (a), and any affidavits or declarations filed in response. In the alternative, the court, in its discretion, may receive other evidence at a hearing.

(d) A determination by the court that a settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(e) A party aggrieved by a court determination on the issue of good faith may appeal the determination. The appeal shall be filed within twenty days after service of written notice of the determination, or within any additional time not exceeding twenty days as the court may allow.

(f) The running of any statute of limitations or other time limitations shall be tolled during the period of consideration by the court on the issue of good faith.

(g) The procedures, rights, and obligations of this section shall apply to a release, dismissal, or covenant given before, as well as after, a lawsuit has been filed and does not require the existence of a lawsuit.

(h) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 2002.”

SECTION 2. Section 663-10.5, Hawaii Revised Statutes, is amended to read as follows:

“[[[§663-10.5]]] Government entity as a tortfeasor; abolition of joint and several liability. Notwithstanding ~~the² of~~ sections 663-11 to 663-13, 663-16, 663-17, and section 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages attributable to the government entity.

For purposes of this section, “government entity” means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county.

For purposes of this section, the liability of a government entity shall include its vicarious liability for the acts or omissions of its officers and employees.”

SECTION 3. Section 663-14, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 663-15, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 6. This Act shall apply to:

- (1) Any release, dismissal, or covenant given after this Act takes effect, regardless of the date of the occurrence of the underlying claim, except for claims arising out of a contract made prior to January 1, 2002; and
- (2) Contract claims where the contract was made on or after January 1, 2002.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Notes

1. So in original.
2. Prior to amendment "provisions" appeared here.
3. Edited pursuant to HRS §23G-16.5.

ACT 301

S.B. NO. 932

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that government contracts, programs, and services should not unintentionally overlook the role of fathers in their involvement in their children's health, welfare, and education. Government should encourage and promote the involvement of both parents in the family through its programs.

While the positive influences of mothers on their children is well-known, research also supports the important role fathers have in creating positive relationships with their children. For example:

- (1) Paternal involvement is important especially for very young children, since early childhood contributes to the development of emotional security, curiosity, and math and verbal skills;
- (2) Higher levels of paternal involvement in activities of their children, such as eating meals together, going on outings, and helping with homework, are associated with fewer behavioral problems, higher levels of sociability, and higher school performance, including adolescents;
- (3) Paternal involvement in children's schooling, such as volunteering at school and attending school meetings, parent-teacher conferences, and class events, is associated with higher grades, greater school enjoyment, and lower chances of suspension or expulsion;
- (4) Father-child relationship affects daughters as well as sons, since girls who live with both parents do better academically and are less likely to engage in early sexual involvement and in alcohol and drug use; and
- (5) Although negative peer influence is the major reason kids use drugs, research suggests that positive family influence is the main reason kids do not use drugs, with boys and girls having reduced risk of drug and alcohol use if their fathers are involved in their lives.

The legislature further finds that while government cannot make good parents, it can support efforts to help parents become the best mothers and fathers they can be.

The purpose of this Act is to help prevent the inadvertent neglect of fathers' involvement in their children's lives by asking all state and county agencies to review their contracts, programs, and services to ensure that fathers are included, where possible, in their children's lives. The intent is not to eliminate programs that grant benefits to mothers, such as maternity leave, or to interfere with family court operations. Rather, the goal is to make the state and county executive agencies aware of the possibility that their actions may provide a preference for mothers over fathers in circumstances where such a preference is not warranted.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

“§ - **Parental preferences.** (a) The purpose of this section is to help to eliminate any preference in a state or county executive agency contract, program, or service that favors one parent over the other in terms of child-rearing; provided that nothing in this section is intended to affect maternity benefits. This section shall not serve as a legal basis to invalidate any state or county contract, program, or service.

(b) All state and county executive agencies with contracts, programs, and services that affect parental roles in children's health, welfare, and education shall review those contracts, programs, and services, in the sole discretion of the agency, and determine whether a preference exists that favors one parent over another in the raising of their children. If a determination in the sole discretion of the agency is made that a preference exists, it shall direct its staff to analyze the preference and determine whether it unfairly precludes a parent from participating in child-rearing. If so, the state or county agency shall seek to eliminate that preference by encouraging modifications to ensure the inclusion of both parents in all contracts, programs, and services designed to assist in the raising of children; provided that this provision shall in no instance be interpreted to reduce or negatively impact maternity leave benefits or require any changes in personnel programs or work force policies.

(c) This section shall not apply to a preference that:

- (1) The state or county agency determines to be in the best interest of the child;
- (2) Would impose an unreasonable burden on the State or a county by removing a preference from existing contracts, programs, or services; or
- (3) Conflicts with existing collective bargaining contracts.”

SECTION 3. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii Constitution or Article I, section 10, of the United States Constitution.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval, except that section 2 of this Act shall take effect on July 1, 2002.

(Approved June 28, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 302

S.B. NO. 1102

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that:

- (1) In Public Law 106-569, subtitle, the “Hawaiian Homelands Home-ownership Act of 2000”, the United States “recognized and reaffirmed that:
 - (A) Congress extends services to Native Hawaiians “because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship”;
 - (B) “Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii”; and
 - (C) “In the area of housing, the United States has recognized and reaffirmed “the political relationship with the Native Hawaiian people through:
 - (i) The enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people;
 - (ii) The enactment of the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved on March 18, 1959 (73 Stat.4) by:
 - (a) Ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et. seq.); and
 - (b) Transferring the United States responsibility for the administration of Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et. seq.), enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;
 - (iii) The authorization of mortgage loans insured under the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act (Public Law 479; 73d Congress; 12 U.S.C. 1701 et. seq.);

- (iv) Authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101-235;
 - (v) The inclusion of Native Hawaiians in the definition under section 3764 of title 38, United States Code, applicable to subchapter V of chapter 37 or title 38, United States Code (relating to a housing loan program for Native American veterans); and
 - (vi) The enactment of the Hawaiian Home Lands Recovery Act (109 Stat. 357; 48 U.S.C. 491, note prec.) which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Home Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory.”
- (2) The Hawaiian Homes Commission Act, 1920, as amended, has assisted the Native Hawaiian people in maintaining distinct native communities on Hawaiian Home Lands. These communities provide the Hawaiian people with an important foundation that has fostered and perpetuated the Hawaiian language, culture, and traditions; and
 - (3) The beneficiaries of the Hawaiian Home Lands trust individually and collectively through their representative organizations including homestead community associations have expressed a strong desire for greater participation and governance over their own affairs.

The purpose of this Act is to promote increased self-governance by Hawaiian homestead community organizations over the affairs of their distinct native communities on Hawaiian home lands.

SECTION 2. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding two new sections to be appropriately designated and to read as follows:

“§ **Federal reaffirmation.** The United States and State of Hawaii hereby reaffirm and recognize that:

- (1) The native Hawaiian people are a distinct native, indigenous people who have maintained their own language, culture, and traditions, and have established Hawaiian home lands areas protected under federal and state law;
- (2) The United States has a unique trust responsibility to promote the welfare of the aboriginal, indigenous people of the State, and the federal government has delegated broad authority to the State to act for their betterment; and
- (3) The aboriginal, indigenous people of the State retain their inherent sovereign authority and their right to organize for their common welfare.

§ **Community based governance on Hawaiian home lands.** It is the policy of the State to support participation in governance by promoting the empowerment of democratically-elected Hawaiian homestead community self-governance organizations.

In furtherance of this policy, and with the consent of the Congress of the United States, the State may delegate to a democratically-elected organization representing a Hawaiian homestead community or communities the authorities delegated to the State by the United States relating to the administration of the Hawaiian Homes Commission Act, 1920, as amended.

The commission may establish a working relationship with a democratically-elected Hawaiian homestead community self-governance organization to promote community welfare. The selection of authorities to be delegated shall be left to the Hawaiian homes commission's discretion. The commission may establish criteria to determine the boundaries and location of a Hawaiian homestead community and whether a Hawaiian homestead community organization is eligible for delegation. Criteria for eligibility shall include but not be limited to the following:

- (1) The organization and its leadership is a bona fide representative body of native Hawaiian residents, homestead lessees, qualified successors residing within the homestead community, and native Hawaiians who have designated that homestead community as their primary choice of residence with the department of Hawaiian home lands and who are awaiting an award of a lease under this Act;
- (2) The organization is governed by free and fair elections; and
- (3) The organization demonstrates sufficient capacity to implement the authorities that are delegated.

The commission may contract with and delegate authority to a Hawaiian homestead community self-governance organization to perform governmental services for the homestead community represented by that homestead organization. Any such contract shall include a requirement that the government service shall be performed at a level and quality comparable to the services that would otherwise be provided by the department of Hawaiian home lands.

The department of Hawaiian home lands may adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.²

SECTION 4. This Act shall take effect upon its approval and with the consent of Congress.

(Approved June 28, 2001.)

Notes

1. No bracketed material.

2. Edited pursuant to HRS §23G-16.5.

ACT 303

S.B. NO. 1199

A Bill for an Act Relating to Concessions On Public Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 102-1, Hawaii Revised Statutes, is amended to read as follows:

"§102-1 Definition. The word "concession" as used in this chapter means the grant to a person of the privilege to:

- (1) Conduct operations [~~that are essentially retail in nature,~~] involving the sale of goods, wares, merchandise, or services to the general public[~~, such as restaurants, cocktail lounges, soda fountains, and retail stores,~~] including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunication services, in or on buildings or land under the jurisdiction of any government agency; [~~and~~]

- (2) Operate a parking lot on property owned or controlled by the State with the exception of buildings, facilities, and grounds operated by or otherwise under the jurisdiction of the department of education[-]; and
- (3) Use, for compensation, space on public property to display advertising, or to conduct operations for communications or telecommunications purposes.”

SECTION 2. Section 102-2, Hawaii Revised Statutes, is amended to read as follows:

“§102-2 Contracts for concessions; bid required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, except under contract let after public [advertisement] notice for sealed [tenders] bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years.

(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports[;], except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued ~~[unless the premises covered under the permit is no longer being used for the existing purposes, and that the permit is issued as a temporary use of the premises until the governmental agency proceeds to use the premises for a new purpose; and provided further that no permits shall be issued]~~ for more than a one year[;] period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law; [and]
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park and operating under agreement with the appropriate agency solely for such purposes, aims, and goals[-]; and
- (10) For operations of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in a writing that shall be included in the contract file.

(c) The bidding requirements of subsection (a) shall not apply to any non-renewable dispositions granting rights for a period not in excess of fourteen days.”

SECTION 3. Section 102-4, Hawaii Revised Statutes, is amended to read as follows:

“**§102-4 Advertisement for bids.** ~~[Publication]~~ Public notice of a call for ~~[tenders]~~ bids shall be made not less than three different days ~~[in a newspaper of general circulation printed and published within the State,]~~ statewide, with respect to any state agency, or ~~[of general circulation]~~ county-wide within the particular county with respect to any county or county agency.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2002.

(Approved June 28, 2001.)

ACT 304

S.B. NO. 1390

A Bill for an Act Relating to Traditional Hawaiian Healing Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Nothing herein shall prohibit traditional Hawaiian healing practices by traditional native Hawaiian healers, both as recognized and certified as such by [the] a panel convened by Papa Ola Lokahi. No person or organization involved with the selection of panel members or the denial of certification of healers under this subsection shall be held liable for any cause of action that may arise out of their participation in the selection or certification process.”

SECTION 2. Act 162, Session Laws of Hawaii 1998, is amended by amending subsection (a) of section 4 to read as follows:

“(a) Papa Ola Lokahi shall convene [a] at least one panel of traditional native Hawaiian healers to address issues and recommend legislation relating to the permanent implementation of the purposes of this Act[; and]. A panel shall consist of any number of members deemed necessary by Papa Ola Lokahi; provided that at least three native Hawaiian persons who are deemed by the Papa Ola Lokahi to be proficient in the practice of traditional native Hawaiian healing methods shall be members of any such panel. Once a panel is established, subsequent members shall be chosen by a majority of the existing panel members sitting on that panel; provided that if a prospective member claims to be proficient in the practice of traditional native Hawaiian healing methods, then the approval of a majority of the native Hawaiian healers on the panel shall be required.”

SECTION 3. Act 162, Session Laws of Hawaii 1998, as amended by Act 209, Session Laws of Hawaii 2000, is amended by amending section 6 to read as follows:

~~“SECTION 6. This Act shall take effect upon its approval[; provided that on July 1, 2002, subsection (c) of section 453-2, Hawaii Revised Statutes, shall be repealed].”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

ACT 305

S.B. NO. 1561

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Central Kauai Sanitary Landfill, LLC, is proposing a privately operated landfill in partnership with Grove Farm Company, Ltd., at a site that is expected to last approximately seventy-five years. The special purpose revenue bonds authorized under this Act will provide low interest rate bond financing for the development of a private landfill in central Kauai, on approximately two hundred fifty acres located at tax map key 3-3-02-001 and 3-4-06-012, bounded by Kaumualii highway, Kipu road, County road, and Primary Cane Haul road.

The legislature further finds that the proposed project may assist in achieving integrated solid waste management planning goals consistent with section 226-15, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and may help promote the public health, safety, and general welfare of the people of the State.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$5,000,000, in one or more series, for the purpose of assisting Central Kauai Sanitary Landfill, LLC, a Hawaii corporation, in planning, designing, and constructing a private landfill on the island of Kauai.

The legislature finds and determines that the issuance of special purpose revenue bonds under this Act constitutes a “project” as defined in part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest and general welfare of the State.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2004, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

ACT 306

H.B. NO. 1391

A Bill for an Act Relating to the Arts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In its efforts to ensure the development and implementation of content and performance standards for fine arts, including the four disciplines of the visual arts, music, drama and theatre, and dance, the legislature enacted Act 80, Session Laws of Hawaii 1999. In Act 80, the legislature directed the state foundation on culture and the arts to oversee the review, revisions, and completion of the Hawaii content and performance standards for the fine arts for all K-12 grade students, as well as to develop a statewide arts education strategic plan that incorporates and integrates the fine arts standards into the classroom curriculum. The legislature designated the state foundation on culture and the arts as the lead agency to ensure that all students attending schools in Hawaii will benefit from the legislative directive.

The legislature required the state foundation on culture and the arts to complete its duties by working in consultation with the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, and other arts education organizations with statewide representation. The legislature further required the coordinated cooperation of the specified entities because it recognized that no one entity or individual could sufficiently develop and implement quality arts education programs for the State. The needs are too great, and resources too limited.

By specifically focusing on the fine arts, the legislature demonstrates its understanding that the fine arts are a fundamental component of a student's comprehensive educational experience. The legislature recognizes and appreciates that the intellectual requirements of the fine arts help students develop problem-solving abilities and the powerful thinking skills of analysis, synthesis, and evaluation. It further recognizes and appreciates that the creative demands of the fine arts improve the students' verbal and nonverbal communication skills as well as their imagination and ability to be resourceful and pragmatic. Studying the fine arts can help students acquire and develop vocational, professional, and personal skills so they can eventually lead full and productive lives and become contributing members of their communities and society. In addition, the legislature recognizes and appreciates that the arts connect people across time, culture, and place, because they are both universal and culturally specific.

In response to the legislative mandate of Act 80, Session Laws of Hawaii 1999, the state foundation on culture and the arts convened its first meeting in July of 1999 with representatives from the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, the Hawaii Association of Independent Schools, and Hawaii Alliance for Arts Education. The various administrative heads of these arts educational institutions and organizations agreed to formalize their working relationship by creating the Hawaii arts education partners and the arts education strategic planning committee to complete the legisla-

tive directive. Throughout the second half of 1999 and first half of 2000, the arts education strategic planning committee diligently worked to fulfill its mandate. It further sought the advice from other members of the arts education community. Concurrently, the department of education refined the fine arts content standards in 1999.

The arts education strategic planning committee began its task by amassing data and information regarding the impact and importance of acquiring a quality arts education. This included representative examples of research, standards, curriculum and professional development, methodology, and mechanism by which implementation and attainment of fine arts content and performance standards can be ascertained and assessed. The arts education strategic planning committee also learned that currently there are no permanent department of education positions for fine arts specialists in the public elementary schools. For those schools able to secure the temporary classroom services of department of education certified fine arts educators, very few have music specialists, virtually none have visual arts specialists, and no entity provides for dance or drama specialists. In contrast, intermediate, middle, and secondary public schools have music and visual arts teachers, many of whom are certified in their discipline. Independent schools experience similar staffing challenges. Consequently, the arts education strategic planning committee developed a strategic plan that focuses on the school grades with the greatest needs, K-5, and emphasizes the integration and collective participation of classroom teachers, educators, artists, and supportive arts education organizations in developing arts education programs that include assessment tools.

The Hawaii arts education strategic plan 2001 includes the recommended strategies: advocacy, research and teaching, and standards. The first year is devoted to planning and marketing, and the implementation of the strategies will occur during the next five years. This includes but is not limited to:

- (1) Identifying and seeking resources from both private and public funding sources;
- (2) Augmenting the pool of qualified arts educators and specialists, and artists as educators;
- (3) Developing and acquiring curriculum and collateral instructional material;
- (4) Supporting a multi-year professional development institution for grades K-5 to help implement the fine arts standards;
- (5) Working to implement needed policy changes; and
- (6) Educating the decision-makers and public as to the importance of arts education.

The legislature finds that the fine arts are integral to a fully developed standards-based curriculum in public schools. Yet, the legislature specifically notes the problematic finding by the Hawaii arts education partners of the need to significantly increase the number of qualified arts educators at all levels within the public school system. The legislature recognizes and appreciates the current circumstances in that the department of education understands the fine arts include the four disciplines of the visual arts, music, drama and theatre, and dance, yet is able to fund only two state-level arts educational specialists positions. Currently, the two arts educational specialists not only serve as state resource specialists for the entire public school system in their respective areas of expertise of the visual arts and music but must also offer support for the remaining two disciplines, drama and theatre, and dance.

This problem is particularly acute at the elementary school level, where there are few teachers who can provide consistent incremental instruction in the fine arts. Generally, the only schools that have personnel dedicated to the fine arts are those which use instructional resource augmentation teachers in one of the fine arts

disciplines. However, these instructional resource augmentation positions can be used flexibly and are often used in the areas of technology or physical education rather than the arts. There will not be a consistent arts curriculum in Hawaii's public schools until there are dedicated positions at the school level for specialists in visual arts, music, drama and theatre, and dance.

The legislature recognizes the efforts and achievements to date of the Hawaii arts education partners. In addition to the submission of the Hawaii arts education strategic plan 2001, the Hawaii arts education partners are urged to continue to develop and deliver services to students, educators, artists, and the community-at-large as it successfully seeks federal and private sector funds and other resources by leveraging its legislative mandate.

By the action of this legislative body, the legislature recognizes and appreciates the intended goal of developing and implementing fine arts standards is to enable every student to study and experience the fine arts by means of sequential, consistent, and meaningful arts-infused, standards-based curricula delivered by qualified arts educators, arts specialists, and artists as educators. It further recognizes and appreciates the need to augment statewide resources for, and standards-based classroom instruction in all disciplines of the fine arts, particularly in the underserved areas of visual arts, music, drama and theater, and dance.

The purpose of this Act is to:

- (1) Continue the existence of the Hawaii arts education partners;
- (2) Encourage the Hawaii arts education partners to persevere in its efforts to fully implement the terms of the Hawaii arts education strategic plan 2001;
- (3) Continue the annual reports from the state foundation on culture and the arts including the reporting of the progress of the Hawaii arts education partners; and
- (4) Appropriate funds for school-level positions in each of the four main disciplines of the fine arts, namely the visual arts, music, drama and theatre, and dance.

SECTION 2. Section 9-3, Hawaii Revised Statutes, is amended to read as follows:

“§9-3 Duties. The foundation shall:

- (1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;
- (2) Establish written standards and criteria by which grant contracts shall be evaluated;
- (3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
- (4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
- (5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
- (6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;

- (7) Through its executive director:
 - (A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds which may become available from other governmental and private sources; provided that all those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of any designation, the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and
 - (B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and furtherance of culture and the arts and history and the humanities;
- (8) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year. Annual reports shall include the total number and amount of gifts received, payroll disbursements, contracts entered into, and progress and accomplishments made during the year[;], including the efforts of the Hawaii arts education partners and its progress in implementing the Hawaii arts education strategic plan;
- ~~(9) In consultation with the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, and other arts education organizations with statewide representation:~~
 - ~~(A) Review, revise, and complete the Hawaii content and performance standards in the arts for all K-12 grade students; and~~
 - ~~(B) Develop a statewide strategic plan for grades K-12 arts education that incorporates and integrates the arts content and performance standards established in subparagraph (A). The plan shall address curriculum development for classroom instruction, professional development for educators and artists, and the methodology and mechanisms by which implementation and attainment of fine arts content and performance standards can be ascertained and assessed;]~~
- (9) Convene the Hawaii arts education partners, which is composed of the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, the Hawaii Association of Independent Schools, and the Hawaii Alliance for Art Education, to fully implement the terms of the Hawaii arts education strategic plan;
- (10) Display student art works in public buildings, sponsor student art displays, promote arts education, and in other ways encourage the development of creative talent among the young people of Hawaii;
- (11) In cooperation with qualified organizations conduct research, studies, and investigations in the fields of ethnohistory and the humanities; make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii; place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and maintain a register of the location of such materials;
- (12) Cooperate with and assist the department of land and natural resources and other state agencies in developing and implementing programs

- relating to historic preservation, research, restoration, and presentation, as well as museum activities; and
- (13) Establish an individual artist fellowship program to encourage artists to remain and work in Hawaii and to reaffirm the importance of Hawaii's artists and their cultural and economic contributions to the State by:
- (A) Recognizing and honoring Hawaii's exceptionally talented visual and performing artists for their outstanding work and commitment in the arts; and
 - (B) Enabling these artists to further their artistic goals."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2002-2003 for at least twelve full-time equivalent (12.00 FTE) permanent state resource teachers in the fine arts in the department of education. There shall be at least:

- (1) One specialist in the visual arts;
- (2) One specialist in music;
- (3) One specialist in drama and theatre; and
- (4) One specialist in dance,

provided that:

- (1) The director of the school renewal branch of the department of education shall provide oversight for each state resource teacher who is either certified to teach a specific fine arts discipline or possesses the requisite knowledge and skills of a traditionally trained cultural practitioner; and
- (2) The Hawaii arts education partners, in cooperation with the state resource teachers, shall continue to implement the various elements of the strategic plan, including the acquisition of needed resources for elementary schools that are willing to actively adopt, integrate, and implement arts-infused, standards-based arts education into the curricula for grades K-5.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

ACT 307

H.B. NO. 1667

A Bill for an Act Relating to Student Loans for Teachers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Commission on Teaching and America's Future, a national organization with nineteen partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America's

Future, composed of a representative group of educational stakeholders, has collaborated on research-based recommendations to improve teaching in Hawaii.

One thing was clear, aside from home and societal factors, teacher quality is, without a question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and given our highest priority. The legislature finds that teachers must have the resources and skills necessary to ensure that all students attain their full potential.

The major recommendations of this group encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Ensuring teacher preparation and professional development;
- (3) Recruiting and placing qualified teachers in all classrooms;
- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

The purpose of this Act is to create the Hawaii educator loan program and special fund as a tool to recruit college students to become educators and to ensure that these graduates teach in our public schools.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by creating a new section to be appropriately designated and to read as follows:

“§304- Hawaii educator loan program; special fund. (a) There is created the Hawaii educator loan program to be administered by the University of Hawaii, for the purpose of providing financial support to students who complete a state-approved teacher education program and who agree to teach in the Hawaii public school system. Eligibility shall be awarded by the University of Hawaii to students on a competitive basis. The amount to be loaned to a student shall be determined by the board of regents based on need for financial aid and proof of acceptance into a state-approved teacher education program at the University of Hawaii. The maximum amount of loans that a student may receive under this program shall be an aggregate amount equivalent to tuition payments and costs of textbooks and other instructional materials necessary to complete a state-approved teacher education program.

(b) There is created in the treasury of the State, the Hawaii educator loan program special fund, for the purpose of providing loans pursuant to subsection (a). All loans made under this section shall bear interest at five per cent simple interest. Repayment of principal and interest charges shall commence one year after graduation or three months after a borrower ceases to be enrolled in the state-approved teacher education program and shall be paid in periodic installments within a ten-year period. The university may charge late fees and all other reasonable costs for the collection of delinquent loans. All interest and payments received on account of principal shall be credited to the special fund.

(c) Upon a showing of proof that the individual has completed a state-approved teacher education program and is employed as a full-time teacher in the Hawaii public school system, one-tenth of the total amount of the loan and interest shall be waived for every year that a loan recipient teaches in a Hawaii public school in a hard-to-fill position as determined by the superintendent of education, including special education, regular education shortage categories, or Title 1 schools, and in one of the following capacities:

- (1) As an elementary school teacher teaching in the field of elementary education who has met standards as set forth by the Hawaii teacher standards board; or
- (2) As a secondary school teacher teaching in the subject area that is relevant to the loan recipient’s academic major as certified by the

department of education who has met standards as set forth by the Hawaii teacher standards board.

Liability for repayment of a loan shall be canceled upon the death or permanent total disability of the borrower.

(d) If a loan recipient subject to this section fails to teach in the Hawaii public school system for a minimum of ten consecutive years from the loan recipient's original date of employment with the department of education, excluding sabbatical and other forms of temporary leaves of absence, then the loan recipient shall repay any remaining loan balance at the rate of ten per cent simple interest.

(e) In accordance with chapter 103D, the university may enter into written contracts with collection agencies for the purpose of collecting delinquent student loans. All payments collected, exclusive of a collection agency's commissions, shall revert, and be credited, to the loan fund. A collection agency that enters into a written contract with the University of Hawaii for the collection of delinquent student loans pursuant to this section, may collect a commission from the debtor in accordance with the terms of, and up to the amounts authorized in, the written contract."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 for student loans under the Hawaii educator loan program to be deposited to the credit of the Hawaii educator loan program special fund.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 308

H.B. NO. 1668

A Bill for an Act Relating to Rehiring Retired Teachers in the Department of Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Commission on Teaching and America's Future, a national organization with nineteen partner states, including Hawaii, seeks to improve student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America's Future, comprised of a representative group of educational stakeholders, has collaborated on research-based recommendations to improve teaching in Hawaii. The recommendations encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Providing for teacher preparation and professional development;
- (3) Strengthening teacher recruitment and placing qualified teachers in all classrooms;

- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

One thing was clear: aside from home and societal factors, teacher quality is, without a question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and given our highest priority. Teachers must be equipped with the resources and skills necessary to ensure that all students attain their full potential.

In its efforts to provide quality education for all students, the department of education continues to seek solutions to address its recruitment needs in maintaining a teacher applicant pool capable of addressing continuing teacher shortages in all academic areas. The shortage of applicants for teaching is projected to exist for at least another ten years.

SECTION 2. Beginning July 1, 2001, the department of education may employ retired teachers at up to one hundred per cent full-time equivalents in teacher shortage areas identified by the department of education and to serve as mentors for new classroom teachers with the prior approval of the superintendent of education, and pursuant to collective bargaining agreements. The provisions of sections 88-21, 88-42.5, 88-43, 88-45, and 88-46, Hawaii Revised Statutes, and any other statute to the contrary notwithstanding, retired teachers who are hired under this section shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of their employment; provided that the retired teachers shall continue to receive entitled normal retirement benefits without penalty. To qualify for full-time employment, the teacher shall be retired for two calendar years. A retired teacher may qualify for mentoring immediately upon retirement.

SECTION 3. This Act shall take effect on July 1, 2001, and shall be repealed on July 1, 2005.

(Approved July 2, 2001.)

ACT 309

S.B. NO. 493

A Bill for an Act Relating to Public Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the backlog of repair and maintenance projects for public schools across the State is now estimated at more than \$600,000,000. This accumulation of projects has occurred because of tight budgets over the last decade, when an average of only \$22,000,000 a year was appropriated for the upkeep of elementary, middle, and high school campuses, even though they required an estimated \$66,000,000 in maintenance each year.

The legislature further finds that no public school in the State is ever given sufficient funds to cover all of its repair and maintenance needs, so the deterioration and degradation of each campus compounds with each passing school year. The general practice has been to repair the most critical, health-threatening conditions or to tackle the least-involved projects in order to keep facilities operating.

The governor has proposed that the sum of \$50,000,000 be included in the capital improvement projects budget for the repair and maintenance of our schools. While clearly a substantial sum that is much needed, it pales in comparison to the total deferred maintenance requirements of the system.

As a consequence, if those moneys are handled in the manner that is typical of the system, they will be governed by the priority matrix and handled in a way that disperses them throughout the whole of the system and leaves no single place readied and prepared to provide the physical environment in which powerful learning can occur. Its impact will be marginalized and no school will receive the critical infusion necessary to fully address all its repair and maintenance needs. No school will receive much more than crisis management treatment. There will be no visible or obvious impact in any locale, and no campus will be restored to the status of a fully intact and healthy learning environment.

The legislature finds that education is universally recognized as the key to Hawaii's future in a global, high-tech economy. However, except for the State's most modern campuses, such as at Kapolei, Kapaa, or Keeau, the legislature finds that schools statewide will never support the kind of teaching our children deserve if facilities continue to become rundown, unhealthy, and even dangerous.

The legislature finds that one of the components of school repair and maintenance is the development of a "sweat-equity" program, spearheaded by Helping Hands Hawaii, that consists of professional and community work hours, materials, and design contributions, local business donations, military participation, and other in-kind endowments, that would be the basis for restoration projects within geographical regions defined by their kindergarten through grade twelve school districts. The intent of this program is to place parents and immediate communities on the front line for their respective schools.

The legislature finds that there is a need to develop a public-private partnership to mobilize the community by involving stakeholders in Hawaii's public educational system, including parents of students, alumni, teachers, business, and government, as well as the students themselves, to actually complete the repair and maintenance projects.

Accordingly, the purpose of this Act is to begin to work towards eliminating the \$600,000,000 repair and maintenance backlog for Hawaii's public schools by:

- (1) Appropriating state funds, and encouraging federal and private contributions, to a fund established as a separate fund of Helping Hands Hawaii, a nonprofit organization, to provide public-private funding of these backlogged projects through grants. Helping Hands Hawaii, through its project, Hawaii 3R's, is to seek funding and financial grants to supplement state funding wherever available, including special program grants from the federal government, and private-sector contributions from sources such as the travel, construction, development, or high technology industries. These funds would be used to award grants and purchase services and materials beyond the department of accounting and general services' budgeting to support proposals from schools and communities. However, the intent is not to supplant the department's budget for the routine, day-to-day maintenance and emergency repair of public schools. An advisory board of Helping Hands Hawaii is to review grant proposals and rate them according to pre-determined criteria to select the projects it would support with appropriate funding. The department of accounting and general services already has extensive data on the long-delayed repairs needed by the schools, with engineering and design work sometimes already performed; and
- (2) Authorizing contractors, architects, engineers, surveyors, landscape architects, and pest control operators licensed under chapters 444, 460J, and 464, Hawaii Revised Statutes, who provide professional services for the repair and maintenance of Hawaii's public schools through Hawaii 3R's, to take an income tax credit as an incentive to provide such services.

Finally, the legislature finds that appropriating public funds to Helping Hands Hawaii serves the public purpose of expediting the repair and maintenance of Hawaii's public schools.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Credit for school repair and maintenance. (a) There shall be allowed to each taxpayer licensed under chapter 444, 460J, or 464, who is subject to the tax imposed by this chapter, and does not owe the State delinquent taxes, penalties, or interest, a credit for contributions of in-kind services for the repair and maintenance of public schools provided by the licensed taxpayer in Hawaii. The credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The amount of the credit determined under this section for the taxable year shall be equal to ten per cent of the value of contributions of in-kind services to the Hawaii school repair and maintenance fund for that taxable year; provided that the aggregate value of the contributions of in-kind services claimed by a taxpayer shall not exceed \$40,000.

(c) For purposes of this section:

“Value of contributions of in-kind services” means the fair market value of uncompensated services or labor as determined and certified by the department of accounting and general services.

“Public schools” has the same meaning as defined in section 302A-101.

(d) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(e) All claims for tax credits under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) The department of accounting and general services shall maintain records of the names of taxpayers eligible for the credit and the total value of in-kind services contributed for the repair and maintenance of public schools for the taxable year. All contributions shall be verified by the department of accounting and general services. The department of accounting and general services shall total all contributions that the department certifies. Upon each determination, the department of accounting and general services shall issue a certificate to the taxpayer certifying:

- (1) The amount of the contribution;
- (2) That the taxpayer is licensed under chapter 444, 460J, or 464; and
- (3) That the taxpayer has obtained a current and valid certificate signed by the director of taxation, showing that the taxpayer does not owe the State any delinquent taxes, penalties, or interest.

The taxpayer shall file the certificate from the department of accounting and general services with the taxpayer's tax return with the department of taxation. When the total amount of certified contributions reaches \$2,500,000, the department of accounting and general services shall immediately discontinue certifying contributions and notify the department of taxation. In no instance shall the total amount of certified contributions exceed \$2,500,000 for each taxable year.

(g) The State shall provide not more than \$250,000 in tax credits for contributions of in-kind services in Hawaii for the repair and maintenance of public schools.

(h) The director of taxation shall prepare any forms that may be necessary to allow a credit to be claimed under this section.”

SECTION 3. Hawaii school repair and maintenance fund. (a) There is established the Hawaii school repair and maintenance fund (hereinafter, “fund”) as a separate fund of Helping Hands Hawaii, a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) Helping Hands Hawaii shall expend moneys in the form of either grants to organizations or contracts with private vendors from the fund for the repair and maintenance of public schools in Hawaii in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund, and that Helping Hands Hawaii, through its project, Hawaii 3R’s, assist the public and private sectors in reviewing and investigating all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing public school repair and maintenance programs, including school-level minor repairs and maintenance accounts established under section 302A-1504, Hawaii Revised Statutes.

(d) Helping Hands Hawaii shall appoint the members of the Hawaii school maintenance and repair advisory board, which shall be responsible for:

- (1) Soliciting and otherwise raising funds for the fund;
- (2) Establishing criteria for the expenditure of funds;
- (3) Reviewing grant proposals utilizing criteria established by Helping Hands Hawaii; and
- (4) Making recommendations for grants and other specific expenditures.

Members of the advisory board shall be stakeholders in Hawaii’s public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.

(e) The aggregate principal sum deposited in the fund, and any income and capital gains earned by the fund but not expended for administration, shall be invested in accordance with the provisions of Helping Hands Hawaii in a manner intended to maximize the rate of return on investment of the fund.

(f) There may be an endowment component of the funds.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) Helping Hands Hawaii is authorized to expend the principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to Helping Hands Hawaii for fund moneys shall meet all of the following standards at the time of application:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which

business is conducted and policies that relate to the management of potential conflict of interest situations;

- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(j) All proposals submitted to Helping Hands Hawaii for fund moneys shall be approved by the department of accounting and general services for consistency in meeting design and materials standards for public schools.

(k) Organizations or agencies to which fund moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded;
- (2) Comply with applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by Helping Hands Hawaii to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.

(l) Chapter 103D, Hawaii Revised Statutes, shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Helping Hands Hawaii shall be held accountable for the use of the funds under a contract with the department of accounting and general services.

(m) Any contracts awarded by Helping Hands Hawaii shall be made under as much competition as is practical to execute its purposes.

(n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department of accounting and general services not later than thirty days from the date Helping Hands Hawaii receives the audit results. In addition, Helping Hands Hawaii shall retain for a period of three years and permit the department of accounting and general services, the department of education, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence that is pertinent to the fund.

(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, Helping Hands Hawaii, or Hawaii 3R's.

(p) For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by Helping Hands Hawaii from private, federal, county, or community sources.

SECTION 4. The state comptroller shall submit an annual report of the progress of the Hawaii school repair and maintenance fund no later than twenty days prior to the convening of the regular sessions of the legislature.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2002-2003, as a grant-in-aid pursuant to chapter 42F, Hawaii Revised Statutes, to Helping Hands Hawaii for the Hawaii school repair and maintenance fund.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$41,772 or so much thereof as may be necessary for fiscal year 2001-2002 for a position in the department of accounting and general services to

coordinate public and private efforts to repair and maintain public schools. The comptroller may employ the coordinator, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, as necessary to effectuate the purposes of this Act. The coordinator shall serve at the pleasure of the comptroller.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 9. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2001; provided that section 2 of this Act, upon its approval, shall apply to taxable years beginning after December 31, 2000.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 310

S.B. NO. 865

A Bill for an Act Relating to School-to-Work.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 343, Session Laws of Hawaii 1997, is amended by amending section 1 to read as follows:

“SECTION 1. The legislature finds that Hawaii and the rest of the states are undertaking a major initiative that involves reforming education, developing its workforce, and stimulating economic development. The states are attempting to create a school-to-work system that all major industrialized countries have in place except for the United States. To help accomplish this, Congress enacted the School-to-Work Opportunities Act of 1994, P.L. 103-239. Hawaii [~~will receive \$10,200,000 over a five-year period to build~~] has received \$10,625,000 by September 2000, to assist in building a school-to-work system.

Building a school-to-work [~~opportunities~~] system is a difficult and enormous undertaking. It requires systemic change and involvement of all segments of the community in the effort, particularly business, industry, and labor. Moreover, it must involve all of education from kindergarten [~~to~~] through postsecondary education, all academic and vocational disciplines, and all students.

Building a school-to-work system requires time. The School-to-Work Opportunities Act of 1994, Public Law 103-239, provided five years of “seed” money

to begin the process. Five years is not enough time to bring about the systemic changes that need to occur. If school-to-work is to continue, then it must receive support from state and local entities.

The purpose of this Act is to [establish] continue the development of a school-to-work [opportunities] system in Hawaii, including the mechanism for governance, management, and distribution of federal and state resources."

SECTION 2. Act 343, Session Laws of Hawaii 1997, is amended by amending section 2 to read as follows:

"SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . [SCHOOL-TO-WORK OPPORTUNITIES PILOT PROJECT]
SCHOOL-TO-WORK**

§302A- Hawaii school-to-work [opportunities] executive council; establishment; composition. (a) There is established a Hawaii school-to-work [opportunities] executive council. The members of the council shall be appointed by the governor. The council shall consist of up to, but not more than, twenty-one members. Council membership shall consist of [six]:

(1) Six executive heads of state agencies, [the] serving as ex officio voting members:

(A) The superintendent of [the department of] education[-the];

(B) The president of the University of Hawaii[-the];

(C) The state director [of vocational] for career and technical education[-and the]; and

(D) The directors of the departments of business, economic development, and tourism, human services, and labor and industrial relations[-serving as ex officio voting members. Representatives from local or regional partnerships, a];

and

(2) A member of:

(A) The board of education designated by the chairperson of the board of education; and

(B) The board of regents of the University of Hawaii designated by the chair of the board of regents.

A student member[-] and a voting majority representing business, industry, labor, and community organizations [which] that include regional representations from all counties shall be appointed pursuant to section 26-34.

(b) The length of service for [the];

(1) The directors of departments of the State represented on the council shall be limited to the terms of their cabinet appointments[-];

(2) The terms of the superintendent of education, the president of the University of Hawaii, and the state director for career and technical education shall be limited to their terms of office;

(3) The terms of the board of education and board of regents members shall be at the discretion of the chairs of the respective boards; and

(4) The terms of all non-state agency head members shall be for three years, commencing on July 1 of the first year and ending on June 30, of the third year.

Terms shall be staggered with one-third of the members being appointed in each fiscal year.

[(b)] (c) Vacancies shall be filled by the governor for the unexpired term. The governor shall appoint as chairperson of the council a member other than a state

agency head or a board of education or board of regents member who shall be recommended by the council.

[(e)] (d) The council members shall serve without pay but shall be entitled to their traveling expenses within the State when attending meetings of the council or when actually engaged in business relating to the work of the council.

§302A- Powers of the council. The powers of the Hawaii school-to-work [opportunities] executive council shall include[;] but not be limited to:

- (1) Establishing and setting the general directions¹ for the Hawaii school-to-work [opportunities] system[;] and its council[; and executive director];
- (2) ~~[Appointing, supervising, and if necessary, discharging the executive director, not subject to chapters 76 and 77;]~~ Advising the department on the appointment of staff;
- (3) Establishing rules and procedures regarding its membership and operations;
- (4) Seeking federal, state, and private resources;
- [(4)] (5) Approving expenditure plans and award grants/contracts[;] from moneys secured through the school-to-work council/office to districts/ local school/business partnerships. Approval of expenditure plans and awarding of grants/contracts shall be consistent with department of education policy;
- [(5)] (6) Ratifying the establishment of all necessary standing and ad hoc committees; and
- [(6)] (7) Engaging in such activities as may be necessary or desirable to implement the functions of the School-to-Work Opportunities Act of 1994, and of the council or through delegation to [the executive director.] the department of education.

§302A- Staff. The [Hawaii school-to-work opportunities executive council] department may appoint such staff as deemed necessary, not subject to chapters 76 and 77, to carry out [its] the functions and duties[. The staff of the council shall report to the executive director.] of the Hawaii school-to-work executive council.

§302A- Contracts. The Hawaii school-to-work [opportunities] executive council [or its executive director] may advise the department to make, execute, enter into, amend, supplement, and carry out contracts, and all other instruments the council finds are necessary or convenient for the fulfillment of its functions and duties.

§302A- Organizational relationships. The Hawaii school-to-work [opportunities] executive council shall act as the [governing] advocacy board for the school-to-work system. The Hawaii school-to-work [opportunities] council [and staff] shall be placed within the department of education for administrative purposes.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Prior to amendment "and policy" appeared here.

ACT 311

S.B. NO. 1211

A Bill for an Act Relating to School Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii's children are our future. However, many of our students are being forced to learn in classroom environments that are unacceptable. Peeling paint, broken cabinets, sinks without water, and faulty lighting are just some of the repair and maintenance items that need to be addressed. A run-down classroom or school building directly affects the morale of both teachers and students. The repair and maintenance backlog for Hawaii's public schools is over \$600,000,000.

The purpose of this Act is to create the Hawaii school-level minor repairs and maintenance special fund. This special fund will assist schools in addressing their minor repair and maintenance needs. Repair and maintenance projects may be initiated for preventative or routine maintenance, or to preserve an existing facility or restore it to good condition. The funds shall not be used for personnel costs, improvements, or any other purpose not related to the repair and maintenance of facilities.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- Hawaii school-level minor repairs and maintenance special fund. There is established within the state treasury a special fund to be known as the Hawaii school-level minor repairs and maintenance special fund, into which shall be deposited all moneys collected pursuant to section 235-102.5(b), and any other moneys received by the department in the form of grants and donations for school-level minor repairs and maintenance. The special fund shall be administered by the department and used to fund school-level minor repairs and maintenance."

SECTION 3. Section 235-102.5, Hawaii Revised Statutes, is amended to read as follows:

"§235-102.5 Income check-off authorized. (a) Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.

(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the Hawaii school-level minor repairs and maintenance special fund established by section 302A- , when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked."

SECTION 4. Section 302A-1504, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-1504] School-level minor repairs and maintenance accounts. (a) The department shall establish two school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed [\$8,000] \$25,000 each per school. The [accounts] first account shall be comprised of general funds appropriated to the department and the second account shall be comprised of funds appropriated out of the Hawaii school-level minor repairs and maintenance special fund pursuant to section 302A- for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts.

(b) Funds in [this account] these accounts shall be expended at the direction of the school principal to contract for minor repairs and maintenance. [Any] Notwithstanding any other law to the contrary, general or special funds appropriated for this purpose that are unencumbered at the close of each fiscal year [shall lapse into the general fund.] in these accounts shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

- (1) A report to the director of finance ninety days after the close of each fiscal year, shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds in each account that shall carry over to the next fiscal year; and
- (2) A copy of this report to the legislature at least twenty days prior to the convening of each regular session of the legislature.

(c) Each school principal, through the superintendent, shall submit a report annually to the department of accounting and general services in the form prescribed by the comptroller on expenditures made from¹ each account."

SECTION 5. There is appropriated out of the Hawaii school-level minor repairs and maintenance special fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002, and the same sum or so much thereof as may be necessary for fiscal year 2002-2003, to carry out the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 7. This Act shall take effect on July 1, 2001; provided that section 3 shall apply to taxable years beginning after December 31, 2000.

(Approved July 2, 2001.)

Notes

1. Prior to amendment "this" appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 312

S.B. NO. 1212

A Bill for an Act Relating To Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Commission on Teaching and America's Future, a national organization with nineteen partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America's Future, composed of a representative group of educational stakeholders, has collaborated on research based recommendations to improve teaching in Hawaii. The recommendations encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Teacher preparation and professional development;
- (3) Teacher recruitment and placing qualified teachers in all classrooms;
- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

One thing was clear: aside from home and societal factors, teacher quality is, without question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and given our highest priority. We must equip our teachers with the resources and skills necessary to ensure that all students attain their full potential.

This Act arose out of the work of the Hawaii Policy Group of the National Commission on Teaching and America's Future.

The purpose of this Act is to strengthen the teaching profession by making it self-governing and accountable for who becomes and remains licensed to teach in Hawaii. Like its professional counterparts, the board of medical examiners for doctors and the Hawaii State Bar Association for lawyers, the Hawaii teacher standards board will be authorized to issue, renew, revoke, suspend, and reinstate licenses for individuals desiring to teach in our State. Transferring these duties from the department of education to the Hawaii teacher standards board will remove the inherent conflict of interest faced by the department in its current role as employer, as well as licensing agent.

This Act also allows the department of education to offer teaching contracts in a more timely fashion while also requiring the department to publicly report the instances in which it has hired an unlicensed individual to teach. Under this Act, the Hawaii teacher standards board will also be authorized to conduct state approval of teacher education, as well as to engage in other teacher quality-related matters.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§302A- Approval of teacher education programs; professional development of teachers. The board shall be responsible for approving teacher education programs that meet the standards established by the board. The board may engage in efforts relating to the improvement of instruction through teacher education and professional development, and to attract qualified candidates for teacher training from among the high school graduates of the State.

§302A- Efforts related to teacher quality. (a) The board may participate in efforts relating to issues affecting teacher quality. The board may conduct professional development activities related to its standards, and shall promote and support high teacher standards and accomplished teaching through means deemed appropriate by the board.

(b) To remain current with trends and issues in teacher licensure systems, beginning teacher programs, the assessment of teaching skills, teacher development, and other related topics, the board shall participate in programs and attend conferences and training that address these topics. The board may conduct research and development activities for the purpose of staying abreast of or better understanding these trends and issues.”

SECTION 3. Section 302A-501, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of [sections 302A-801 to 302A-808:] subpart D:

“Board” means the Hawaii teacher standards board.

~~“Credential” means an emergency or temporary license issued under this chapter based on standards and guidelines set by the board.]~~

“Emergency hire” means an unlicensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

“License” means the document signifying the board’s grant of permission to practice the profession of teaching.

“Teacher” means ~~an~~ a licensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

~~[This subsection is repealed on June 30, 2010.]”~~

SECTION 4. Section 302A-602, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-602] Teachers; certificates, licenses, and credentials. (a) No person shall serve as a teacher in the department without first having obtained a ~~[certificate,] license[, or credential]~~ from the ~~[department] board~~ in such form as the ~~[department] board~~ determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates issued to ~~[teachers] individuals~~ who are not required to obtain a license ~~[or credential]~~ pursuant to ~~[§]sections 302A-801 to 302A-809[§].~~

(b) Beginning with the ~~[1997-1998] 2002-2003~~ school year, no person paid under the salary schedule contained in the unit 5 collective bargaining agreement shall serve as a teacher in the department without first having obtained a license ~~[or credential]~~ pursuant to ~~[§]sections 302A-801 to 302A-809[§]~~ from the ~~[department] board~~ in such form as the ~~[department] board~~ determines.

(c) Beginning with the 2002-2003 school year, the department may employ unlicensed individuals as emergency hires pursuant to sections 302A-801 to 302A-808.”

SECTION 5. Section 302A-602.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-602.5]~~ **[Certificates] Licenses; revocation.** (a) The ~~[department]~~ board may revoke any ~~[certificate]~~ license after its issuance if the ~~[certificate]~~ license holder does not possess the requisite qualifications. The ~~[department]~~ board shall provide the ~~[certificate]~~ license holder an opportunity to justify retaining the ~~[certificate]~~ license before its revocation.

(b) Upon revocation of the ~~[certificate]~~ license, the ~~[department]~~ board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the ~~[certificate]~~ license related to the revocation for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had ~~[certificates]~~ licenses revoked.”

SECTION 6. Section 302A-603, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-603]~~ **Teaching without certificates[, or licenses[, or credentials]; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher without holding an unrevoked certificate issued under ~~[§]sections 302A-602 to 302A-640, and 302A-701~~], shall be fined not more than \$25.

(b) Beginning with the ~~[1997-1998]~~ 2002-2003 school year, whoever serves in the department as a teacher, paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked or unsuspended license or credential issued under ~~[§]sections 302A-801 to 302A-809~~], shall be fined not more than \$500.

(c) Beginning with the ~~[1997-1998]~~ 2002-2003 school year, ~~[whoever serves in the department as a teacher,]~~ an individual not paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked certificate issued under ~~[§]sections 302A-602 to 302A-640, and 302A-701~~], shall be fined not more than \$500.

(d) Beginning with the 2002-2003 school year, emergency hires shall not be subject to this penalty.”

SECTION 7. Section 302A-610, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Beginning with the ~~[1997-1998]~~ 2002-2003 school year, this section shall be interpreted as though the term “certificated” read “licensed” ~~[or “credentialed”]~~, as the latter ~~[terms are]~~ term is used in subpart D, and as circumstances require.”

SECTION 8. Section 302A-616, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-616]~~ **Conditions of sabbatical leave of absence.** (a) A teacher or educational officer on sabbatical leave shall devote one-half of the teacher’s or educational officer’s total leave to professional educational course work, research, or other professional activity approved by the department. The department shall establish guidelines and criteria of professional educational course work, research, or other professional activity. Before granting a sabbatical leave to a teacher or educational officer, the department and the teacher or educational officer shall enter into a contract, which shall provide for the following:

- (1) That the teacher or educational officer agrees to return to serve in the department, the University of Hawaii, or any community college for a

period of not less than two years within one year after termination of the teacher's or educational officer's sabbatical leave;

- (2) That upon failure of the teacher or educational officer to comply with paragraph (1), the teacher or educational officer agrees to refund to the department all moneys received while on sabbatical leave;
- (3) That upon failure of the teacher or educational officer to comply with paragraph (2), the teacher or educational officer agrees to pay for all costs incurred by the department in enforcing paragraph (2);
- (4) That upon failure to comply with paragraph (1), the teacher's or educational officer's Hawaii teaching certificate shall be canceled by the department; and
- (5) Any other provisions deemed necessary by the department to be included in the contract.

(b) Beginning with the [1997-1998] 2002-2003 school year, this section shall be interpreted as though the term "certificate" read "license" [or "credential"], as the latter terms are used in subpart D, and as circumstances require."

SECTION 9. Section 302A-618, Hawaii Revised Statutes, is amended to read as follows:

“[H]§302A-618[.] Classification, teachers. (a) The designation of any teacher to any given class shall be determined by the department in accordance with [its certification] licensing requirements.

~~[(b) Teachers shall be classified as follows:~~

- (1) ~~A Class I teacher is any teacher who holds a certificate issued by the department and who does not qualify as a Class II, III, IV, V, VI, or VII teacher as described below;~~
- (2) ~~A Class II teacher is any teacher who holds a certificate issued by the department based upon four acceptable years of college education and other requirements as may be established by the department;~~
- (3) ~~A Class III teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and other requirements as may be established by the department;~~
- (4) ~~A Class IV teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and fifteen additional credits approved by the department and other requirements as may be established by the department;~~
- (5) ~~A Class V teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and thirty additional credits approved by the department and other requirements as may be established by the department;~~
- (6) ~~A Class VI teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and forty-five additional credits approved by the department and other requirements as may be established by the department; and~~
- (7) ~~A Class VII teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and sixty-six additional credits approved by the department and other requirements as may be established by the department, or any teacher who holds a certificate issued by the department based upon a doctorate and who teaches subjects in or related to the teacher's major.]~~

[(e)] (b) Any teacher teaching technical school courses who is transferred to a community college under the jurisdiction of the board of regents of the University

of Hawaii shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege.

[(d)] (c) Beginning with the [1997-1998] 2002-2003 school year, this section shall be interpreted as though the terms "certification" and "certificate" read "licensing" [or "~~credentialing~~,"] and "license" [or "~~credential~~"], as the latter terms are used in subpart D, and as circumstances require."

SECTION 10. Chapter 302A, Hawaii Revised Statutes, is amended by amending part III, subpart D, to read as follows:

"D. Hawaii Teacher Standards Board

§302A-801 Hawaii teacher standards board established. (a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of ~~[nine]~~ thirteen members, including ~~[four-certified]~~ not less than six licensed teachers[-] regularly engaged in teaching, three educational officers, the chairperson of the board of education or the chairperson's designee, the superintendent or the superintendent's designee, a representative of independent schools, and the dean of the University of Hawaii college of education or the dean's designee[-]; provided that the dean's designee shall be chosen from the member institutions of the teacher education coordinating committee established under section 304-20.

(b) Except for the chairperson of the board of education, the superintendent, and the dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the board. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel ~~[and the neighbor-~~ hood] from all islands.

(c) Appointed board members shall serve not more than three consecutive three-year terms; provided that the initial terms of the appointed members that commence after June 30, 2000, shall be staggered, as follows:

- (1) Three members to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) One member to serve a one-year term.

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

[[§302A-802]] Licensing and credentialing standards. (a) The board shall establish licensing and credentialing standards that govern teacher licensing and credentialing ~~[within the department:]~~ in Hawaii. Licensing and credentialing standards established by the board shall be adopted as rules under chapter 91[-] unless otherwise specified in this subpart.

(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualification of these applicants, as well as the nature and availability of existing ~~[pre-service]~~ preservice higher education teacher training programs. The board shall also consider alternative ~~[certification:]~~ routes to licensing, such as national teacher examinations,

and credentials that certify competency in subject areas or programs taught in the public schools.

§302A-803 Powers and duties of the board. In addition to establishing standards for the issuance and renewal of licenses and credentials, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations[;], and state and federal funds;
- (4) Submitting an annual report to the governor and the legislature on the board's operations[;] and from the 2007-2008 school year, submitting a summary report every five years of the board's accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91, including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund;
- (7) Establishing penalties in accordance with chapter 91; [and]
- (8) Granting extensions of credentials on a case-by-case basis pursuant to section 302A-805[-]; provided that this paragraph shall be repealed on June 30, 2002;
- (9) Issuing, renewing, revoking, suspending, and reinstating licenses and credentials;
- (10) Reviewing reports from the department concerning the number of individuals hired on an emergency basis;
- (11) Applying licensing and credentialing standards on a case-by-case basis and conducting licensing and credentialing evaluations;
- (12) Preparing and disseminating teacher licensing information to schools and operational personnel;
- (13) Approving teacher preparation programs;
- (14) Administering reciprocity agreements with other states relative to licensing;
- (15) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- (16) Participating in efforts relating to teacher quality issues, conducting professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; and
- (17) Adopting applicable rules and procedures.

[§302A-804] Powers and duties of the department. The department shall retain all of its rights and powers except for the authority provided to the board under this subpart. The department's powers and duties under this subpart shall be limited to ~~[administering the teacher licensing and credentialing process, including:~~

- ~~(1) Issuing, renewing, revoking, suspending, and reinstating licenses and credentials;~~
- ~~(2) Issuing credentials, not to exceed one year at a time, pending the submittal of transcripts and other documentation;~~

- (3) Issuing credentials, not to exceed one year at a time, to fill vacancies only after exhausting all reasonable recruitment means to find qualified, interested, and acceptable candidates;
- (4) Applying licensing and credentialing standards on a case-by-case basis and conducting licensing and credentialing evaluations;
- (5) Preparing and disseminating teacher licensing and credentialing information to schools and operational personnel;
- (6) Developing applicable rules and procedures;
- (7) Administering reciprocity agreements with other states; and
- (8) ~~Implementing changes made by the board to licensing and credentialing standards.];~~
- (1) Hiring, except in emergency situations as described in this chapter, licensed teachers to teach in their fields of licensing;
- (2) Reporting data annually to the board about the supply of, and demand for, teachers, including the identification of shortage areas, out-of-field teaching assignments, numbers of teachers teaching out-of-field, numbers and types of courses and classes taught by out-of-field teachers, and numbers and types of students taught by out-of-field teachers;
- (3) On an emergency and case-by-case basis, hiring unlicensed individuals; provided that:
 - (A) A list of the names, work sites, teaching assignments, and progress toward licensing of these individuals shall be reported to the board and any changes shall be updated on a monthly basis by the department;
 - (B) There are no properly licensed teachers for the specific assignments for which the individual are being hired; and
 - (C) No individual may be employed by the department on an emergency basis for more than four years. During this time the individual must demonstrate active pursuit of licensing in each year of employment;
- (4) Submitting an annual report to the board documenting:
 - (A) The number of emergency hires by subject matter areas and by schools;
 - (B) The reasons and duration of employment for the emergency hiring enumerated in subparagraph (A);
 - (C) Individual progress toward licensing; and
 - (D) The department's efforts to address the shortages described in subparagraph (A); and
- (5) Providing any other information requested by the board that is pertinent to its powers and duties.

§302A-805 Teachers; license or credential required; renewals. (a) Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, if the licensee continues to satisfy the board's licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years, if the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing. For the 2000-2001 and 2001-2002 school years only, the board may, on a case-by-case basis, extend a credential for one year, but no more than twice for any credential holder; provided that the individual seeking an extension meets the following requirements and submits a written request to the board consisting of:

- (1) Copies of the department's form C with supporting documents that demonstrate active pursuit of and satisfactory progression in license requirements;
- (2) Documentation of extenuating circumstances that explain the need for an extension or lack of availability of programs and courses required for licensing;
- (3) Narrative evaluation from current and past school principals documenting teaching performance according to the board's performance standards;
- (4) Submittal of the credential holder's proposed action plan to meet all licensing standards;
- (5) Documentation of passing scores for basic skills tests or documented evidence, which the individual maintains, of concerted effort to pass the basic skills test, beyond mere retaking of the test; and
- (6) Documentation of passing scores for applicable subject matter content tests unless the subject matter is integrated into the teacher preparation program.

This subsection shall be repealed on June 30, 2002.

(b) The board shall consider the following in granting any extension:

- (1) The diligence with which the credential holder has pursued licensing;
- (2) The extenuating circumstances and the extent to which the individual has been subjected to constraints beyond the individual's control to the timely completion of all licensing requirements;
- (3) Evidence of strong teaching performance according to the board's performance standards; and
- (4) Likelihood of successful implementation of the credential holder's proposed action plan.

This subsection shall be repealed on June 30, 2002.

(c) Beginning July 1, 2002, all new licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields specified on the licenses and shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards;
- (2) Show evidence of successful teaching in the previous five years; and
- (3) Satisfy the board's requirements for renewal of licenses.

Teachers whose licenses expire on June 30, 2002, or June 30, 2003, shall be granted an automatic extension of two years. No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91.

[H§302A-806[]] Hawaii teacher standards board revolving fund. There is established within the state treasury a revolving fund to be known as the Hawaii teacher standards board revolving fund, into which shall be deposited all ~~[fees collected pursuant to section {302A-803}, and all other]~~ moneys received by the board in the form of appropriations, fees, fines, grants, ~~[or]~~ donations~~[-]~~, or revenues regardless of their source. The revolving fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.

[H§302A-807[]] Refusal, suspension, revocation, and reinstatement of licenses and credentials. (a) The ~~[superintendent]~~ board shall serve as the final adjudicator for appeals relating to licensing and credentialing, including ~~[but not~~

limited-to] the issuance or nonissuance of licenses and credentials, and the suspension, nonrenewal, and revocation of licenses and credentials.

(b) The [superintendent] board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the [department.] board. In every case to revoke or suspend a license or credential, the [superintendent] board shall give the person concerned written notice [and] that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and [the superintendent] shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the [superintendent] board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the [superintendent] board or to any subpoena issued by the [superintendent,] board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license or credential, or any licensee or credential holder whose license or credential has been suspended or revoked, shall have the right to appeal the [superintendent's] board's decision to the circuit court of the circuit in which the applicant, licensee, or credential holder resides in the manner provided in chapter 91[-]; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license or credential, the [department] board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license or credential [for]:

(1) To the department; and

(2) For the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses[, or credentials[, or other certificates] revoked.

[§302A-808] Penalty. Any person who engages in the profession of teaching in a public school without first being issued a license or [credential] hired on an emergency basis as defined in this chapter shall be fined not more than \$500. Any person who knowingly or intentionally violates this subpart by employing an individual as a public school teacher who does not possess a valid license or [credential] is not a department of education emergency hire as defined in this chapter may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board revolving fund.

[§302A-809 Repeal. This subpart D, sections 302A-801 to 302A-809, is repealed on June 30, 2010.]”

SECTION 11. Act 122, Session Laws of Hawaii 1996, as amended by Act 218, Session Laws of Hawaii 1999, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval, except that section 2 shall take effect retroactive to July 1, 1995[-, and shall be repealed on June 30, 2010].”

SECTION 12. Act 106, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval [-; provided that on June 30, 2002, this Act shall be repealed and sections 302A-803 and 302A-805,

~~Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act].~~”

SECTION 13. Effective July 1, 2002, all references to “credential” or “credentialing” in sections 302A-410, 302A-610, 302A-802, 302A-803, and 302A-807, and the phrase “teacher’s or” in section 302A-616(a)(4) shall be deleted.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$86,807, or so much thereof as may be necessary for fiscal year 2001-2002 to establish the technological and personnel infrastructure necessary to conduct the licensing and renewal function of the Hawaii teacher standards board including the hiring of staff and the sum of \$347,228, or so much thereof as may be necessary for fiscal year 2002-2003 to conduct the new functions of, including the hiring of staff for, the Hawaii teacher standards board. The department of education shall facilitate the transfer or establishment of positions as required by the Hawaii teacher standards board for this purpose. The department of education shall transfer one personnel specialist to the Hawaii teacher standards board on April 1, 2002.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 313

S.B. NO. 1213

A Bill for an Act Making an Appropriation for the Establishment and Continuation of Professional Development Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Commission on Teaching and America’s Future, a national organization with nineteen partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America’s Future, composed of a representative group of educational stakeholders, has collaborated on research-based recommendations to improve teaching in Hawaii. The recommendations encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Teacher preparation and professional development;
- (3) Teacher recruitment and placing qualified teachers in all classrooms;
- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

One thing was clear: aside from home and societal factors, teacher quality is, without a question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and

given our highest priority. We must equip our teachers with the resources and skills necessary to ensure that all students attain their full potential.

By establishing professional development schools in Hawaii, in which the public school enters into formal agreements with teacher education programs that address standards-based education and teacher preparation, our teachers will be equipped with the resources and skills necessary to ensure that all students attain their full potential.

As reported by the Hawaii Teacher Education Coordinating Committee of the National Commission on Teaching and America's Future, research on professional development schools indicates that:

- (1) Students enrolled in professional development schools perform better than other students on common measures of student learning in basic subjects such as language arts and mathematics;
- (2) Teachers prepared in professional development schools are better able to elicit student learning than teachers assigned traditional internships;
- (3) Teachers prepared in professional development schools are more familiar with the practices required by today's schools than teachers who obtain experience in other ways;
- (4) Professional development conducted by professional development schools is more closely integrated with preservice education;
- (5) Administrators report that they prefer to hire teachers whose clinical training occurred in a professional development school;
- (6) Universities benefit from teachers who are prepared in professional development schools because these teachers help enable students to perform more successfully at the university level;
- (7) School districts benefit from professional development schools because they reduce recruiting costs, retraining costs, legal fees, and professional development needs;
- (8) School districts benefit from professional development schools because they are useful sources of research information concerning the quality of new programs;
- (9) Students in professional development schools experience more hours of adult attention than do students in other schools; and
- (10) Better teachers make better schools.

It is the purpose of this Act to appropriate funds to support the creation and continued development of professional development schools in Hawaii's public schools.

For the purposes of this Act, "professional development schools" means those public schools, consortia of schools, or departments within schools that have entered into formal agreements with state-approved teacher education programs to address:

- (1) Standards-based education;
- (2) Teacher preparation; and
- (3) Professional development.

The department of education shall allocate the funds appropriated to professional development schools by means of competitive grants for up to five years subject to the availability of resources. A grant application shall include a description of how the professional development school will meet the professional development school standards of the National Council for the Accreditation of Teacher Education and the department's six images of success:

- (1) Standards-based learning;
- (2) Professionalism and the capacity of the system;
- (3) Quality of student support;
- (4) Coordinated team work;

- (5) Responsiveness of the system; and
- (6) Focused and sustained action.

Five per cent of the funds appropriated for the establishment and continued development of professional development schools shall be set aside for program administration, including an annual professional development school conference.

Grants may be awarded for up to five years and may be renewable. Professional development schools shall present annual reports to the department and shall present findings at the annual professional development schools conference.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the same sum or so much thereof as may be necessary for fiscal year 2002-2003 for the establishment and continued development of professional development schools in Hawaii public schools.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

ACT 314

S.B. NO. 1214

A Bill for an Act Relating to National Board Certification for Department of Education Teachers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The National Commission on Teaching and America's Future, a national organization with nineteen partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America's Future, composed of a representative group of educational stakeholders, has collaborated on research-based recommendations to improve teaching in Hawaii. The recommendations encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Teacher preparation and professional development;
- (3) Teacher recruitment and placing qualified teachers in all classrooms;
- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

One thing was clear: aside from home and societal factors, teacher quality is, without a question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and given our highest priority. We must equip our teachers with the resources and skills necessary to ensure that all students attain their full potential.

Research indicates that teacher qualifications comprise a significant factor affecting student achievement and that national board-certified teachers have a strong impact on their students. It is important to identify, support, recognize, and reward Hawaii teachers in the department of education who voluntarily undergo the national board certification process.

National board certification requires a tremendous commitment of time beyond a teacher's normally long day. The application fee represents a large financial investment. To be successful, certification candidates need a strong support program, access to the program and testing facilities, and release days to organize the documents and portfolio required to be submitted for certification.

In Hawaii's short history with national board certification candidate support, efforts have been severely hindered because no state agency has been assigned the responsibility for recruiting candidates, organizing and spearheading efforts related to the National Board for Professional Teaching Standards. Because of its keen interest in teacher standards and quality, the Hawaii teacher standards board is a logical choice for this responsibility.

The purpose of this Act is to authorize the Hawaii teacher standards board to develop, implement, and administer a program to support national board certification candidates in the public schools and to appropriate funds to the department of education for the purpose of this act.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designed and to read as follows:

"§302A- Candidates for certification. (a) There is created in the department, a national board certification support program to provide assistance to any teacher in a public school who becomes a candidate for national board certification.

(b) The Hawaii teacher standards board shall develop, implement, and administer the program."

SECTION 3. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

"§302A-803 Powers and duties of the board. In addition to establishing standards for the issuance of licenses and credentials[;] and any other powers and duties authorized by law, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations;
- (4) Submitting an annual report to the governor and the legislature on the board's operations;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91, including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund;
- (7) Establishing penalties in accordance with chapter 91; and
- (8) Granting extensions of credentials on a case-by-case basis pursuant to section 302A-805."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$115,000 or so much thereof as may be necessary for fiscal year 2002-2003 to establish a national board certification candidate support program for public school teachers to be implemented and administered by the Hawaii teacher standards board. The national board certification candidate support program shall provide candidate support by establishing release days, providing

facilitator and trainer stipends, training materials, and payment of transportation expenses to enable neighbor island candidates to attend candidate support sessions and assessment center exercises on Oahu.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2001; provided that amendments made to section 302A-803, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2002, pursuant to section 4 of Act 106, Session Laws of 2000.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 315

S.B. NO. 1362

A Bill for an Act Relating to Coaches.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that department of education coaches are currently not affiliated with a collective bargaining unit and are compensated on an allocation basis. These allocations have remained static for a decade and are now set at approximately fifty per cent of national standards for school coaches. In the past many coaches used to be certified teachers within the department of education. Presently, however, the number of teacher coaches have dwindled because many choose to become driver education teachers or accept other positions whose salaries increase in conjunction with collective bargaining negotiations.

To ensure that coaches are compensated adequately, two things must take place. First, coaches' allocations must increase regularly and equitably, relative to increases awarded to other educational employees. Second, coaches must receive an immediate increase in their current base compensation to raise their allocations to a level consistent with national standards.

The purpose of this Act is to ensure that coaches within the department of education are compensated equitably and receive allocation increases on a consistent basis, by raising their base compensation rate and tying future increases to collective bargaining agreements negotiated for teachers.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Allocations for coaches. (a) Persons who serve as coaches for school activities shall be paid a portion or all of their allocation for their services, which shall increase by the same percentage as specified in a collectively bargained agreement negotiated for bargaining unit (5) and in force for that time period. Coaches covered by this section may request the department of budget and finance to dispense their allocation directly to the school to be used for the benefit of the coaches' team.

(b) The base stipend for coaches shall be the compensation amounts for coaches for the 2000-2001 school year. Effective July 1, 2003, the base stipend for all coaches of department of education activities shall be increased by fifty per cent for coaches who are employed by the department of education in a teaching capacity and by twenty-five per cent for coaches who are not employed by the department of education in a teaching capacity.’’

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2002-2003, to increase the base stipend of all coaches of department of education activities as follows: by twenty-five per cent for coaches who are employed by the department of education in a teaching capacity; and by twelve and one-half per cent for coaches who are not employed by the department of education in a teaching capacity. For purposes of this section, “base stipend” means the compensation amounts for coaches for the 2000-2001 school year.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 316

S.B. NO. 1577

A Bill for an Act Relating to School Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a key component in improving public education in Hawaii is the provision of school facilities that support and enhance academic programs. While the State has invested over \$1,700,000,000 in the construction of school facilities, repair and maintenance services for these facilities have been curtailed in recent years due to poor economic conditions.

In 2000, economic projections for Hawaii began to show positive signs, and the legislature passed Act 239, Session Laws of Hawaii 2000, which appropriated \$30,000,000 for repair, maintenance, and improvement projects for the department of education in 2000-2001. Act 239 was a significant first step in addressing the State’s long neglected public school facilities, but sustained improvement will require a long-term solution to address both the current backlog and allow preventive repair and maintenance services.

The repair and maintenance backlog alone for public school facilities was estimated at \$600,000,000, as of June 30, 2000. While the State provided a total of \$51,900,000 for school repair and maintenance in 2000-2001, inconsistencies in annual funding have made it impossible to undertake needed repairs on a systematic basis.

According to both the American Public Works Association and the National Association of Higher Education Facilities Officers, a minimum of two to four per cent of a physical plant’s replacement cost should be allocated annually for repair

and maintenance. Using the conservative two per cent figure, this would equal \$51,800,000, per year for Hawaii's public schools, based on 18,500,000 square feet of school facilities and a replacement cost of \$140 per square foot.

The overall purposes of this Act are to fund the \$600,000,000 repair and maintenance backlog over a ten-year period through legislative appropriations, and to fund normal, on-going school repairs and preventive maintenance through general fund appropriations. Specifically, this Act:

- (1) Establishes the school physical plant operations and maintenance account to pay for normal, on-going school repairs and preventive maintenance projects scheduled after June 30, 2001;
- (2) Establishes the state educational facilities repair and maintenance account to eliminate the backlog of projects existing on June 30, 2000;
- (3) Specifies how school repairs and maintenance are to be prioritized and moneys allocated; and
- (4) Provides for the establishment of eight school business and fiscal officers to oversee school facilities planning.

It is not the intent of this Act to undermine the authority of schools to prioritize and approve their repair and maintenance needs pursuant to section 302A-1505, Hawaii Revised Statutes, or to interfere with any partnerships that schools have formed with community groups, volunteers, and businesses, to obtain donated and discounted repair and maintenance services and materials. The legislature remains committed to the principles of local control and decentralized decision making.

SECTION 2. Chapter 36, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§36- State educational facilities repair and maintenance account. (a)

There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Appropriations or authorizations from the account shall be expended by the comptroller.

(b) The department of education, with the assistance of the department of accounting and general services, shall review the existing condition of school facilities and establish specific vision plans for each school complex based on current repair and maintenance requirements and overall repair and maintenance priorities.

(c) Criteria used to establish current repair and maintenance requirements may include:

- (1) The remaining useful life of the school facility and its major components;
- (2) The adjusted life of the school facility and its major components after repair or maintenance; and
- (3) The current and future repair and maintenance requirements of the school facility and its components based on established industry standards or product manufacturer recommendations;

provided that demolition of a facility or any of its components may be recommended if the cost of the repairs do not justify the adjusted life or remaining life of the facility.

(d) Criteria used to establish overall repair and maintenance requirements may include:

- (1) Whether a school facility will continue to be used for the next twenty-five years; and
- (2) Whether a repair or maintenance project is required:
 - (A) For health or safety reasons;
 - (B) To comply with legal mandates;
 - (C) To comply with current building codes; or
 - (D) For preventive maintenance reasons;

provided that in developing criteria, consideration shall be given to school facilities that were more than twenty-five years of age on July 1, 2000.

(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the comptroller shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other means to improve communications and accelerate repairs while preserving the quality of the repairs.

(f) The comptroller shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The comptroller shall develop project specifications based on qualified products lists and standard commercial products.

For the purposes of this subsection:

“Qualified products list” means an approved list of goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.

“Standard commercial product” means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.

This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.

(g) The comptroller shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of repair and maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. Expenditures for repair and maintenance projects undertaken pursuant to this section shall be posted electronically on the Internet by the department of accounting and general services within thirty days of each project's completion.

(h) This section shall be repealed on July 1, 2020.

§36- School physical plant operations and maintenance account; maintenance schedule. (a) There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Appropriations or authorizations from the account shall be expended by the comptroller.

(b) Every school facility newly constructed or renovated after June 30, 2001, shall include a preventive maintenance schedule prepared by the architect or engineer of the facility or the capital improvement project. The maintenance schedule shall include:

- (1) A description of each major component of a facility or capital improvement project and the component's maintenance;
- (2) The starting date of each maintenance project;
- (3) The current, future, and any recurring cost of each maintenance project;
- (4) The useful life of the facility or capital improvement project;
- (5) The present value of the cost of normally scheduled maintenance over the useful life of the facility;
- (6) The adjusted life of the facility or capital improvement project; and
- (7) The replacement date of the facility or capital improvement project.

(c) Moneys in physical plant operations and maintenance account shall be allocated according to departmental school districts based on:

- (1) Estimated preventive and scheduled maintenance costs that reflect the age and condition of existing school facilities in the State in the following categories: re-roofing, electrical, athletic facilities, re-surfacing, equipment, exterior painting, plumbing, structural integrity, termite ground treatment, termite tent treatment, interior painting, air conditioning change out, and re-carpeting; and
- (2) Budgeted recurring maintenance, health and safety requirements, and legal mandates.

(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D;

- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

(e) The comptroller shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of school repair and preventive maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. The department of accounting and general services shall post the following reports electronically on the Internet and update them quarterly:

- (1) Expenditures for school repair and preventive maintenance projects undertaken pursuant to this section, shall be posted within thirty days of each project's completion; and
- (2) A list of each school's repair and maintenance needs to be undertaken."

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended as follows:

1. By adding three new sections to be appropriately designated and to read:

"§302A-A Six-year program and financial plan for school repair and maintenance. (a) The department of accounting and general services, in consultation with the department of education, shall prepare a six-year program and financial plan for school repair and maintenance which shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.

(b) The department of accounting and general services, in consultation with the department of education, shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

§302A-B District business and fiscal officers. (a) The department shall establish eight permanent civil service exempt full-time equivalent business and

fiscal officer positions; provided that four business and fiscal officer positions shall be assigned to the Oahu school districts, with the remaining positions to be assigned to school complexes based on need; and provided further that the business and fiscal officer:

- (1) Shall have a business and facilities management background;
- (2) Shall not be subject to the requirements of chapters 76 and 77; and
- (3) Shall not be required to be a certified teacher.

(b) Departmental school district business and fiscal officers shall be responsible for:

- (1) Coordinating physical plant operations and maintenance activities with the department of accounting and general services;
- (2) Coordinating the training and selection of school custodians; monitoring the performance of school custodians in accomplishing minor repairs with funds from school-level minor repairs and maintenance accounts; and overseeing these accounts at the direction of school principals;
- (3) Planning for capital improvement projects with the department of education and the department of accounting and general services;
- (4) Ensuring that school facilities comply with the laws and rules regarding:
 - (A) The provision of a free appropriate public education for exceptional children with disabilities; and
 - (B) The provision of a free appropriate public education for qualified students with disabilities;
- (5) Assisting the department, individual schools, and school complexes in forming partnerships with community groups, volunteers, and businesses to obtain donated and discounted repair and maintenance services and materials; and
- (6) Developing, coordinating, overseeing, and participating in the data collection for the physical plant analysis report and the maintenance plan for each school.

§302A-C Federal/state cooperation authorized. The department may enter into agreements with any federal agency to construct, repair, or renovate Hawaii public schools on military bases and elsewhere in the State using state or federal funds, subject to the department's educational specifications and standards for facilities. The department shall cooperate with any federal agency to carry out this section."

2. By amending subsection (a) of section 302A-1504, to read:

"(a) The department shall establish school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed ~~[\$8,000]~~ \$25,000 per school. The accounts shall be comprised of funds appropriated to the department for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts. The department shall allocate funds based on the number of students at the school multiplied by a factor which recognizes the age and condition of the school."

3. By amending section 302A-1505 to read:

"[§302A-1505] Prioritization of repair and maintenance. (a) Each school shall meet with the department of accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After

schools have prioritized their repair and maintenance projects, a statewide list shall be prepared[;] and reviewed[;] by the department of accounting and general services, and reviewed and approved by the department of education; provided that the department of education may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be [approved by the individual school-administration and] submitted by the department of education to the department of accounting and general services for implementation. Each listing shall be posted electronically on the Internet. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the [individual school-administration.] department of education.

(b) Prior to meeting with the department of accounting and general services to advise it of a school's repair and maintenance needs, the school's principal and the business and fiscal officer shall consider the recommendations made by the school/community-based management council, if there is such a council at the school; or the local school board, if the school is a new century charter school. If there is no school/community-based management council or local school board, then the school's principal shall appoint a standing committee composed of a teacher, a member of the support staff, a parent, a student, and a community member.

(c) In prioritizing a school's repair and maintenance needs, the department of accounting and general services, the school's principal, and the business and fiscal officer shall consider the availability of donated and discounted repair and maintenance services and materials that will be provided by community groups, volunteers, and businesses."

SECTION 4. The creation of three new staff positions consisting of two building inspector II positions, and one clerk typist III position is authorized by this Act. These positions shall be project funded and assigned to the department of accounting and general services under AGS 807 to work with the department of education to identify and prioritize repairs, maintain historical repair records, and to inspect records.

SECTION 5. All appropriations from the general appropriations act or supplemental appropriations act for AGS 807 physical plant operation and maintenance, or AGS 221 construction, that are used for school repair and maintenance projects shall allow for the expenditure of funds for any project with an estimated cost of less than \$100,000, to be exempt from chapter 103D and section 464-4, Hawaii Revised Statutes; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D, Hawaii Revised Statutes. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D, Hawaii Revised Statutes; provided that the use of one or more provisions of chapter 103D, Hawaii Revised Statutes, shall not constitute a waiver of the exemption of chapter 103D, Hawaii Revised Statutes, and shall not subject the comptroller to any other provision of chapter 103D, Hawaii Revised Statutes;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;

- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

SECTION 6. In codifying the new sections added to chapter 302A, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated by this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2002-2003 for the purpose of funding eight permanent civil service exempt full-time equivalent business and fiscal officer positions.

The sum appropriated shall be expended by the department of education through EDN 400 for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.

**Session Laws of Hawaii
Passed By The
Twenty-First State Legislature
Special Session 2001**

ACT 1

H.B. NO. 1

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 2001.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

A	General funds
B	Special funds
C	General obligation bond funds
W	Revolving funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2001, and ending June 30, 2003. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
The Judicial System							
1.	JUD101 - COURTS OF APPEAL						
	OPERATING		JUD	74.00*		74.00*	
			JUD	4,994,899A		4,826,638A	
				75,000W		243,261W	
2.	JUD111 - CIRCUIT COURTS						
	OPERATING		JUD	515.50*		520.50*	
			JUD	28,900,495A		29,390,723A	
				300,000B		300,000B	
3.	JUD112 - FAMILY COURTS						
	OPERATING		JUD	423.00*		423.00*	
			JUD	28,965,420A		28,943,455A	
				655,580B		655,580B	
4.	JUD121 - DISTRICT COURTS						
	OPERATING		JUD	500.50*		500.50*	
				19,697,021A		19,531,007A	
				35.00*		35.00*	
			JUD	2,345,272B		1,988,786B	
5.	JUD201 - ADMIN. DIRECTOR SERVICES						
	OPERATING		JUD	257.00*		257.00*	
			JUD	16,945,802A		16,972,882A	
			JUD	3,975,388B		1,746,738B	
	INVESTMENT CAPITAL		JUD	14,314,000C		8,713,000C	

PART III. PROGRAM PROVISIONS

SECTION 4. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; provided further that no individual transfer shall be greater than \$250,000; provided further that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die; provided further that these transfers shall be consistent with legislative intent; provided further that the judiciary shall submit a detailed report on each transfer, and this report shall include but not be limited to, the amount transferred, the justification for each transfer, and shall include the complete report from the previous fiscal year; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 5. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any Act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in instances where

programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible; and provided further that a detailed report on all undertakings with the federal government, private organization, or individual entered into by the judiciary from the previous fiscal year and fiscal year 2002 shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 6. Provided that of the general fund appropriation for courts of appeal (JUD 101), the sum of \$638,268 for fiscal year 2001-2002 shall be expended on dues and subscriptions for the law library; provided further that the judiciary shall submit a report to the legislature detailing all expenditures by the law library on dues and subscriptions; provided further that this report shall also include recommendations for the law library to achieve financial self-sufficiency; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 regular session.

SECTION 7. Provided that of the general fund appropriation for circuit court (JUD 111), the sum of \$1,480,747 for fiscal year 2001-2002 and the sum of \$1,890,488 for fiscal year 2002-2003 shall be expended only for the following purposes:

	<u>FY 2002</u>	<u>FY 2003</u>
1st Circuit Drug Court (Oahu)	\$930,849	\$930,849
2nd Circuit Drug Court (Maui)	\$269,380	\$283,602
3rd Circuit Drug Court (Hilo/Kona)	\$116,971	\$440,832
5th Circuit Drug Court (Kauai)	\$163,547	\$235,205;

provided further that any unexpended funds shall lapse to the general fund; provided further that the judiciary shall submit a report of all expenditures; provided further that this report shall include but not be limited to the progress of the drug court, number of individuals in these programs, the success and failure rate by court, and cost per person by court; and provided further that this report shall be submitted no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 8. Provided that of the general fund appropriation for circuit court (JUD 111), the sum of \$7,227,672 for fiscal year 2001-2002 and the sum of \$7,351,854 for fiscal year 2002-2003 shall be in each listed circuit for the adult probation division:

	<u>FY 2002</u>	<u>FY 2003</u>
1st Circuit Court (Oahu)	\$4,395,535	\$4,490,805
2nd Circuit Court (Maui)	\$1,053,032	\$1,060,491
3rd Circuit Court (Hilo/Kona)	\$1,217,024	\$1,234,750
5th Circuit Court (Kauai)	\$562,081	\$565,808;

provided further that any unexpended funds shall lapse to the general fund; and provided further that the judiciary shall submit a report of all expenditures by the adult probation division, broken out by each circuit, twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 9. Provided that of the general fund appropriation for family court (JUD 112), the sum of \$159,505 for fiscal year 2001-2002 and the sum of \$173,540 for fiscal year 2002-2003 shall be expended for a total of five (5) additional probation officers; provided further that any unexpended funds shall lapse to the general fund; and provided further that the judiciary shall submit a report of all

expenditures twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 10. Provided that of the general fund appropriation for the Ho'okele Navigation Project, the sum of \$89,430 for fiscal year 2001-2002 and the sum of \$98,040 for fiscal year 2002-2003 shall be expended only for the following purposes:

	<u>FY 2002</u>	<u>FY 2003</u>
Circuit Court Ho'okele Navigation Project	\$44,715	\$49,020
District Court Ho'okele Navigation Project	\$44,715	\$49,020;

provided further that any unexpended funds shall lapse to the general fund; provided further that the judiciary shall submit a report of all expenditures, number of people served and type of information provided; and provided further that this report shall be submitted no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 11. Provided that the judiciary is authorized to transfer positions and appropriations from the current program structure (Program ID's) to a program structure that reflects the revised lines of authority within the judiciary that result from Achieving Court Excellence (ACE) initiatives; provided further that the judiciary shall submit a comprehensive report on the ACE transition, and this report shall include but not be limited to the organization charts, all positions transfers, all position re-descriptions, and all funding transferred including the date of transfers; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 12. Provided that the judiciary shall submit a report on all positions re-described and the justification for each re-description to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular session.

SECTION 13. Provided that of the general fund appropriation for the judiciary, there shall be no restrictions of any general funds, which have a program appropriation provision assigned to them by this Act; and provided further that any unrequired or unencumbered funds shall lapse to the general fund.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 14. The sum of \$23,027,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
The Judicial System							
JUD201 - ADMIN. DIRECTOR SERVICES							
1. KAUAI JUDICIARY COMPLEX, KAUAI							
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KAUAI JUDICIARY COMPLEX IN LIHUE, KAUAI.							
		DESIGN		400			
		CONSTRUCTION				4,000	
		EQUIPMENT				4,000	
		TOTAL FUNDING	JUD	400C		8,000C	
2. HILO JUDICIARY COMPLEX, HAWAII							
PLANS, LAND ACQUISITION, AND DESIGN FOR THE HILO JUDICIARY COMPLEX, HAWAII.							
		PLANS		25			
		LAND		3,500			
		DESIGN		3,500			
		TOTAL FUNDING	JUD	7,025C			C
3. KOOLAUPOKO DISTRICT COURT, OAHU							
CONSTRUCTION AND EQUIPMENT FOR THE KOOLAUPOKO DISTRICT COURT IN KANEOHE, OAHU.							
		CONSTRUCTION		500			
		EQUIPMENT		775			
		TOTAL FUNDING	JUD	1,275C			C
4. KAPUAIWA BUILDING INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU							
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR AND OTHER IMPROVEMENTS AT THE KAPUAIWA BUILDING, OAHU.							
		DESIGN		20			
		CONSTRUCTION		645			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	675C			C
5. ALIOLANI HALE INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU							
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS AND IMPROVEMENTS AT ALIOLANI HALE, OAHU.							
		DESIGN		55			
		CONSTRUCTION		710			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	775C			C
6. ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.							
		PLANS		1			1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			38		34
		CONSTRUCTION			150		135
		EQUIPMENT			47		43
		TOTAL FUNDING	JUD		236C		213C
7. REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE							
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS			5		5
		DESIGN			70		70
		CONSTRUCTION			415		415
		EQUIPMENT			10		10
		TOTAL FUNDING	JUD		500C		500C
8. KAAHUMANU HALE AIR CONDITIONING CHILLER PLANT REPLACEMENT, OAHU							
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAAHUMANU HALE, OAHU.					
		DESIGN			150		
		CONSTRUCTION			1,400		
		TOTAL FUNDING	JUD		1,550C		C
9. KAUKEAOULI HALE AIR CONDITIONING CHILLER PLANT REPLACEMENT, OAHU							
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAUKEAOULI HALE, OAHU.					
		DESIGN			115		
		CONSTRUCTION			1,120		
		TOTAL FUNDING	JUD		1,235C		C
10. ALIOLANI HALE AIR CONDITIONING EQUIPMENT REPLACEMENT, OAHU							
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF CHILLER PLANT AND AIR CONDITIONING EQUIPMENT AT ALIOLANI HALE, OAHU.					
		DESIGN			48		
		CONSTRUCTION			320		
		TOTAL FUNDING	JUD		368C		C
11. JUVENILE DETENTION HOME FACILITY IMPROVEMENTS, OAHU							
		DESIGN AND CONSTRUCTION FOR ROOF AND OTHER IMPROVEMENTS AT THE EXISTING JUVENILE DETENTION HOME, HALE HOOMALU, OAHU.					
		DESIGN			30		
		CONSTRUCTION			245		
		TOTAL FUNDING	JUD		275C		C

PART V. ISSUANCE OF BONDS

SECTION 15. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$23,027,000.

PART VI. SPECIAL PROVISIONS

SECTION 16. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized in Part II and listed in Part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 2001-2002 and fiscal year 2002-2003 which are unencumbered as of June 30, 2004, shall lapse as of that date.

SECTION 17. The judiciary is authorized to delegate to other state or county agencies the planning, acquisition of land, design, construction, and equipment of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 18. All unrequired balances in the general obligation bond fund, after the objectives of Part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 19. If the amount allocated from the general obligation bond fund for a capital improvement project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project.

SECTION 20. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in Part IV, the chief justice may authorize such reduction of project scope.

SECTION 21. The chief justice shall determine when and the manner in which the authorized capital improvement projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in Part VI of this Act.

SECTION 22. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future Act which have not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 23. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 24. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 25. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 2

H.B. NO. 2

A Bill for an Act Relating to the Budget of the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs.

SECTION 2. Unless otherwise clear from the context, as used in this Act: “Program ID” means the unique identifier for the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

“Means of Financing”, or “MOF”, means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

- A: General Funds
- T: Trust Funds

“Position ceiling” means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 2001, and ending June 30, 2003. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
Office of Hawaiian Affairs							
1.	OHA150 OFFICE OF THE TRUSTEES						
	OPERATING		OHA	1.25*		1.25*	
				26,761A		26,761A	
			OHA	3.75*		3.75*	
				106,990T		106,990T	
2.	OHA160 ADMINISTRATION						
	OPERATING		OHA	7.50*		7.50*	
				920,846A		833,846A	
			OHA	23.00*		23.00*	
				1,947,106T		1,530,943T	
3.	OHA170 PROGRAM SYSTEMS GROUP						
	OPERATING		OHA	5.00*		5.00*	
				1,021,547A		1,021,547A	
			OHA	15.50*		15.50*	
				1,396,089T		1,396,089T	
4.	OHA180 HAWAIIAN RIGHTS DIVISION						
	OPERATING		OHA	4.75*		4.75*	
				650,509A		650,509A	
			OHA	14.75*		14.75*	
				995,844T		995,844T	

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for program systems group (OHA 170), the sum of \$298,000 in general funds and \$298,000 in trust funds for fiscal year 2001-2002 and the sum of \$298,000 in general funds and \$298,000 in trust funds for fiscal year 2002-2003 shall be expended for services on a fee work contracted to Alu Like, Inc.

SECTION 6. Provided that of the funds appropriated for program systems group (OHA 170), the sum of \$68,000 in general funds and \$68,000 in trust funds for fiscal year 2001-2002 and the sum of \$68,000 in general funds and \$68,000 in trust funds for fiscal year 2002-2003 shall be expended for the gifted and talented native Hawaiian children program, Na Pua No'eau.

SECTION 7. Provided that of the funds appropriated for program systems group (OHA 170), the sum of \$40,000 in general funds and \$40,000 in trust funds for fiscal year 2001-2002 and the sum of \$40,000 in general funds and \$40,000 in trust funds for fiscal year 2002-2003 shall be contracted for the native Hawaiian diet program.

SECTION 8. Provided that of the funds appropriated for Hawaiian rights division (OHA 180), the sum of \$333,512 in general funds and \$333,512 in trust funds for fiscal year 2001-2002 and the sum of \$333,512 in general funds and \$333,512 in trust funds for fiscal year 2002-2003 shall be expended for the native Hawaiian rights and land title projects contractually administered through the Native Hawaiian Legal Corporation.

SECTION 9. Provided that whenever the need arises, the board of trustees of the office of Hawaiian affairs may transfer sufficient funds and positions between programs for research and development and operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report shall be made to the legislature no later than thirty days prior to the convening of the regular sessions of 2002 and 2003.

SECTION 10. Provided that the office of Hawaiian affairs shall submit a report detailing all actual expenditures made for fiscal year 2001, actual expenditures as of November 1, 2001, and planned expenditures for fiscal year 2002, and planned expenditures for fiscal year 2003; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 2002.

SECTION 11. In the event that manifest clerical, typographical, or other mechanical errors are found in this Act, the board of trustees of the office of Hawaiian affairs is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 12. This Act shall take effect on July 1, 2001.

(Approved June 19, 2001.)

ACT 3

S.B. NO. 3

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the

general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2000-2001 and estimated for each fiscal year from 2001-2002 to 2004-2005, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
1997-1998	3,195,967,036	
1998-1999	3,254,256,686	
1999-2000	3,256,883,851	
2000-2001	3,630,454,000	\$598,604,967
2001-2002	3,771,444,000	625,398,330
2002-2003	3,989,247,000	657,291,547
2003-2004	4,201,855,000	702,453,942
2004-2005	(not applicable)	737,690,337

For fiscal years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1997-1998, 1998-1999, and 1999-2000 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2000, dated November 24, 2000. The net general fund revenues for fiscal years 2000-2001 to 2003-2004 are estimates, based on general fund revenue estimates made as of May 25, 2001, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2001 is as follows for fiscal year 2001-2002 to fiscal year 2007-2008:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2001-2002	\$376,545,504
2002-2003	420,199,694
2003-2004	386,711,612
2004-2005	386,953,518

Fiscal Year	Principal and Interest
2005-2006	361,277,454
2006-2007	358,039,016
2007-2008	349,616,917

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2008-2009 to fiscal year 2020-2021 when the final installment of \$13,670,916 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 28, 2001, adjusted for lapses totaling \$4,264,867 as provided in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1,¹ (The General Appropriations Act of 2001) the total amount of authorized but unissued general obligation bonds is \$998,411,187. The total amount of general obligation bonds authorized in this Act is \$697,458,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is \$1,695,869,187. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005, the State proposed to issue \$350,000,000 in general obligation bonds during the remainder of fiscal year 2000-2001, \$350,000,000 during the first half of fiscal year 2001-2002, \$150,000,000 during the second half of fiscal year 2001-2002, \$200,000,000 during the first half of fiscal year 2002-2003, \$200,000,000 during the second half of fiscal year 2002-2003, \$150,000,000 during the first half of fiscal year 2003-2004, \$100,000,000 during the second half of fiscal year 2003-2004, \$100,000,000 during the first half of fiscal year 2004-2005, and \$100,000,000 during the second half of fiscal year 2004-2005. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fourth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the

total amount of general obligation bonds which the State proposes to issue during the fiscal years 2000-2001 to 2003-2004 is \$1,500,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 2004-2005. The total amount of \$1,500,000,000 which is proposed to be issued through fiscal year 2003-2004 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,695,869,187, as reported in paragraph (4), except for \$195,869,187. It is assumed that the appropriations to which an additional \$195,869,187 in bond issuance needs to be applied will have been encumbered as of June 30, 2004. The \$200,000,000 which is proposed to be issued in fiscal year 2004-2005 will be sufficient to meet the requirements of the June 30, 2004 encumbrances in the amount of \$195,869,187. The amount of assumed encumbrances as of June 30, 2004 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 2004, and the amount of June 30, 2004 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2004-2005, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
 - (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 6.31 percent for the ten years from fiscal year 2001-2002 to fiscal year 2010-2011. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance

and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13, of the State Constitution</u>
2000-2001	3,419,685,196
2001-2002	3,674,529,260
2002-2003	3,792,650,299
2003-2004	3,765,914,809
2004-2005	3,691,496,121

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
Remainder FY 2000- 2001 \$332,500,000	598,604,967	440,149,694 (2002-2003)

1st half FY 2001-2002		
\$332,500,000	625,398,330	460,099,694 (2002-2003)
2nd half FY 2001-2002		
\$142,500,000	625,398,330	468,649,694 (2002-2003)
1st half FY 2002-2003		
\$190,000,000	657,291,547	458,588,518 (2004-2005)
2nd half FY 2002-2003		
\$190,000,000	657,291,547	470,926,766 (2006-2007)
1st half FY 2003-2004		
\$142,500,000	702,453,942	479,476,766 (2006-2007)
2nd half FY 2003-2004		
\$ 95,000,000	702,453,942	485,176,766 (2006-2007)
1st half FY 2004-2005		
\$ 95,000,000	737,690,337	493,410,567 (2007-2008)
2nd half FY 2004-2005		
\$ 95,000,000	737,690,337	499,110,567 (2007-2008)
(9) Overall and concluding finding.		
From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.		

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1¹ (The General Appropriations Act of 2001) and House Bill No. 596, H.D. 2, S.D. 1, C.D. 1² (Relating to the Hawaii Hurricane Relief Fund) passed by the legislature during the regular session of 2001 and House Bill No. 1³ (the Judiciary Appropriations Act of 2001) passed by this special session of 2001 and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$697,458,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2001.)

Notes

1. Act 259.
2. Act 153.
3. Act 1.

**Session Laws of Hawaii
Passed By The
Twenty-First State Legislature
Second Special Session
2001**

ACT 1

H.B. NO. 236

A Bill for an Act Relating to Sexual Assault.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the first degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
- (b) The person knowingly ~~[subjects to]~~ engages in sexual penetration with another person who is less than fourteen years old; or
- (c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor.

~~[provided this paragraph]~~ Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.”

SECTION 2. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor;

[(e)] (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; [or
(d)] (e) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes [such] the person to have sexual contact with the actor; or
[(e)] (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor[;]
~~provided that paragraphs (b), (c), [and] (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.”~~

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. The prosecuting attorney of each county shall maintain a record of all cases received and prosecuted under sections 707-730(1) and 707-732(1), Hawaii Revised Statutes, between the effective date of this Act and November 30, 2002. The department of the prosecuting attorney of the city and county of Honolulu shall submit its statistics to the department of the attorney general no later than December 6, 2002, for the purposes of section 6 of this Act. A report from the prosecuting attorney of each county, containing a record of the above statistics, shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.

SECTION 5. The attorney general shall convene a task force to engage in a comprehensive review of the effectiveness and impact of this Act, based partly on data provided by the department of the prosecuting attorney of the city and county of Honolulu. The attorney general shall request the Coalition for the Prevention of Sex Assault to assist in the development and work of the task force. In addition to its review of this Act, the task force shall also review differing viewpoints concerning the age of consent for consensual sex conduct, particularly as it relates to minors in sexual relationships with adult partners.

Findings should provide the legislature with factual information, the national experience, and “best practices” for the purpose of assisting the legislature in developing social policy on the issue of “age of consent”, which shall specifically include but is not limited to:

- (1) A compilation of relevant state statutes;
- (2) A compilation of sentencing practices in other jurisdictions;
- (3) An evaluation of statutes and sentencing practices and their impacts on adolescents; and
- (4) Hawaii data on incidents of adolescent sexual activity.

The composition of the task force shall be as follows, but not limited to:

- (1) Each county chief of police, or designate;
- (2) Each county prosecutor, or designate;
- (3) A representative from the judiciary;
- (4) A department of public safety representative;
- (5) A department of health representative;
- (6) A Sex Abuse Treatment Center representative;
- (7) A Sex Assault Coalition representative;
- (8) A Catholic Charities-Child Sex Abuse Treatment Program representative;

- (9) A Children's Advocacy Center representative;
- (10) An office of youth services representative;
- (11) An immigrant service provider representative;
- (12) The chair of the house committee on judiciary and Hawaiian affairs, or designate;
- (13) The chair of the senate committee on judiciary, or designate;
- (14) A Hawaii Family Forum representative;
- (15) A Sisters Offering Support representative;
- (16) A League of Women Voters representative;
- (17) A Hawaii state commission on the status of women representative; and
- (18) A military community representative.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2003.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and shall be repealed on June 30, 2003; provided that sections 707-730(1) and 707-732(1), Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Vetoed by Governor on June 18, 2001, and veto overridden by Legislature on July 10, 2001.)

COMMITTEE REPORTS
ON BILLS WHICH BECAME ACTS

TABLES SHOWING EFFECT
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HB0786	155	1075, 1528	311, 866	95
HB0840	274	1136, 1524	125, 808	102
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HB0861	208	1127, 1367	473, 805	116
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HB0869	141	1128, 1740	470, 786	
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HB0962	156	1141, 1468	172, 632	98
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Notes

1. See also Floor Amendment (HD4).
2. See also Floor Amendment No. 2.
3. Vetoed by Governor on June 18, 2001 and veto overridden by Legislature on July 10, 2001.

**Twentieth and Twenty-First State Legislatures
2000 Second Special and 2001 Regular and Special Sessions**

A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

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302A-803	Am	312	346-____	N	201
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302A-1310	Am	163	346-59	Am	29
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B. SESSION LAWS OF HAWAII AFFECTED

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Act 300	R	40	Act 305	Am	131
Laws 1984			Laws 1997		
Act 141	R	40	Act 222	Am	153
Act 145	R	40	Act 304	R	124
Laws 1985			Act 315	Am	226
Act 96	R	40	Act 328	Am	259
Act 268	Am	179	Act 343	Am	310
Laws 1986			Act 380	Am	3
Act 147	R	40	Laws 1998		
Act 190	R	40	Act 116	Am	259
Act 227	R	40	Act 121	Am	131
Laws 1987			Act 152	Am	116
Act 3	R	40	Act 162	Am	304
Act 216	Am	259	Act 176	Am	213
Act 217	Am	259	Laws 1999		
Act 228	Am	179	Act 29	Am	107
Act 263	R	40	Act 87	Am	2nd Sp 2000 1
Act 304	R	40		R	244
Laws 1988			Act 91	Am	259
Act 142	R	40	Act 116	Am	74
Act 224	R	40	Act 117	Am	213
Act 273	R	40			266
Act 297	Am	40	Act 130	Am	108
Act 299	R	40	Act 146	Am	20
Act 390	Am	259	Act 151	Am	153
Laws 1989			Act 218	Am	312
Act 282	R	40	Act 242	Am	225
Act 314	Am	259	Act 278	Am	176
Act 316	Am	259	Laws 2000		
Laws 1990			Act 91	Am	244
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Laws 1995			Act 250	Am	55
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Act 17	Am	153	Act 281	Am	259
Laws 1996			Act 297	Am	55
Act 7	Am	116	Laws 2000 2nd Sp		
Act 122	Am	312	Act 1	R	244
Act 144	Am	107			

C. SECTIONS OF HAWAIIAN
HOMES COMMISSION ACT OF 1920
(HHCA) AFFECTED

HHCA Section No.	Effect	Affected By Act No.
HHCA ____ (2 secs)	N	302
HHCA 209	Am	122
HHCA 222	Am	110

D. SECTIONS OF STATE
CONSTITUTION AFFECTED

Section No.	Proposed Effect	Bill No.
Art. IV, §§7, 8	Am*	2nd Sp 2000 HB 1

*Ratified by electorate on November 7, 2000.

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